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HISTORY OF MARYLAND,

FROM

ITS FIRST SETTLEMENT, IN 1633,

TO

THE RESTORATION, IN 1660,

WITH

A COPIOUS INTRODUCTION,

AND

NOTES AND ILLUSTRATIONS.

BY JOHN LEEDS BOZMAN.

VOL. II.

BALTIMORE:
JAMES LUCAS & E. K. DEEVER.
1837.

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CHARTER OF MARYLAND.

[As this volume may probably circulate farther than the limits of the State of Maryland, and where the reader may not readily have access to a copy of the Charter of that State, as granted to lord Baltimore, it is thought most proper to insert here the translation of it, from the original latin, as it appears in Bacon's Collection of the laws of Maryland, which translation has always been deemed so authentic as nearly to have superseded the use of the original.]

CHARLES,* by the grace of God, of *England, Scotland, France, and Ireland*, KING, Defender of the Faith, &c. To ALL to whom these presents shall come, GREETING.

II. Whereas our well beloved and right trusty subject CECILIUS CALVERT, Baron of BALTIMORE, in our kingdom of *Ireland*, son and heir of GEORGE CALVERT, knight, late baron of BALTIMORE, in our said kingdom of *Ireland*, treading in the steps of his father, being animated with a laudable and pious zeal for extending the *christian religion*, and also the territories of our empire, hath humbly besought leave of us, that he may transport, by his own industry, and expense, a numerous colony of the *English* nation, to a certain region, herein after described, in a country hitherto uncultivated, in the parts of *America*, and partly occupied by savages, having no knowledge of the Divine Being, and that all that region, with some certain privileges, and jurisdictions, appertaining unto the wholesome government, and state of his colony and region aforesaid, may by our royal highness be given, granted, and confirmed unto him, and his heirs.

III. Know YE therefore, that WE, encouraging with our royal favour, the pious and noble purpose of the aforesaid barons of BALTIMORE, of our special grace, certain knowledge, and mere motion, have GIVEN, GRANTED, and CONFIRMED, and by this our present CHARTER, for US, our heirs, and successors, do GIVE, GRANT, and CONFIRM, unto the aforesaid CECILIUS, now baron of BALTIMORE, his heirs, and assigns, all that part of the

* Charles the first, of England.

Peninsula, or *Chersonese*, lying in the parts of *America*, between the ocean on the east, and the bay of *Chesapeake* on the west; divided from the residue thereof by a right line drawn from the promontory, or head-land, called *Watkin's Point*, situate upon the bay aforesaid, near the river *Wighco*, on the west, unto the main ocean on the east; and between that boundary on the south, unto that part of the bay of *Delaware* on the north, which lieth under the fortieth degree of north latitude from the æquinoctial, where *New England* is terminated: and all the tract of that land within the metes underwritten, (*that is to say,*) passing from the said bay, called *Delaware bay*, in a right line, by the degree aforesaid, unto the true meridian of the first fountain of the river of *Pattowmack*, thence verging towards the south, unto the farther bank of the said river, and following the same on the west and south, unto a certain place called *Cinquack*, situate near the mouth of the said river, where it disembogues into the aforesaid bay of *Chesapeake*, and thence by the shortest line unto the aforesaid promontory or place, called *Watkin's Point*, so that the whole tract of land, divided by the line aforesaid, between the main ocean, and *Watkin's Point*, unto the promontory called *Cape Charles*, and every the appendages thereof, may entirely remain excepted for ever to us, our heirs, and successors.

IV. Also We do GRANT, and likewise CONFIRM unto the said baron of BALTIMORE, his heirs, and assigns, all islands and islets within the limits aforesaid, all and singular the islands, and islets, from the eastern shore of the aforesaid region, towards the east, which have been, or shall be formed in the sea, situate within ten marine leagues from the said shore; with all and singular the ports, harbors, bays, rivers, and straits belonging to the region or islands aforesaid, and all the soil, plains, woods, mountains, marshes, lakes, rivers, bays, and straits, situate, or being within the metes, bounds, and limits aforesaid, with the fishings of every kind of fish, as well of whales, sturgeons, or other royal fish, as of other fish in the sea, bays, straits, or rivers, within the premises, and the fish there taken: and moreover all veins, mines, and quarries, as well opened as hidden, already found, or that shall be found within the region, islands, or limits aforesaid, of gold, silver, gems, and precious stones, and any other whatsoever, whether they be of stones, or metals, or of any other thing, or matter whatsoever: and furthermore the PATRONAGES and ADVOWSONS of all churches which (with the increas-

ing worship and religion of CHRIST,) within the said region, islands, islets, and limits aforesaid, hereafter shall happen to be built; together with licence, and faculty of erecting and founding churches, chapels, and places of worship, in convenient and suitable places, within the premises, and of causing the same to be dedicated and consecrated according to the ecclesiastical laws of our kingdom of ENGLAND;* With all, and singular, such, and as ample rights, jurisdictions, privileges, prerogatives, royalties, liberties, immunities, and royal rights, and temporal franchises whatsoever, as well by sea as by land, within the region, islands, islets, and limits aforesaid, to be had, exercised, used, and enjoyed, as any bishop of *Durham*, within the bishoprick or county palatine of *Durham*, in our kingdom of *England*, ever heretofore hath had, held, used, or enjoyed, or of right could, or ought to have, held, use, or enjoy.

V. And WE do by these presents, for us, our heirs and successors, MAKE, CREATE, and CONSTITUTE HIM, the now baron of BALTIMORE, and his heirs, the TRUE and ABSOLUTE LORDS and PROPRIETARIES of the region aforesaid, and of all other the premises (except the before excepted) saving always the faith and allegiance and sovereign dominion due to us, our heirs, and successors; to HAVE, HOLD, POSSESS, and ENJOY the aforesaid region, islands, islets, and other the premises, unto the aforesaid now baron of BALTIMORE, and to his heirs and assigns, to the sole and proper behoof and use of him, the now baron of BALTIMORE, his heirs and assigns, for ever. To HOLD of us, our heirs and successors, kings of England, as of our castle of *Windsor*, in our county of *Berks*, in free and common SOCCAGE, by fealty only for all services, and not *in capite*, nor by knight's service, YIELDING therefore unto us, our heirs and successors, TWO INDIAN ARROWS of those parts, to be de-

* It would seem from this and the preceding section, that all that follows from the word "England," of this *fourth* section above, relates to the *whole* of the *grant*, and is not confined to the "patronages and advowsons of churches," as would seem at first from the manner in which it is printed in the translation in Bacon's laws. In the original latin, in the opposite page, (as it is in Bacon's laws,) the word "Cum" is printed with a capital letter, which denotes, that a new sentence was intended to begin there; and that the sentence "rights, jurisdictions," &c. refers to *all* that was granted in the *third* and preceding part of the *fourth* section. The words,—"*as well by sea as by land*," &c. confirm this construction. I have, therefore, made a *semicolon*, instead of a *comma*, (as it is printed in Bacon's laws,) at the word "England," and altered the small w of the word "with" into a capital W.

livered at the said castle of *Windsor*, every year, on Tuesday in Easter-week: and also the fifth part of all gold and silver ore, which shall happen from time to time, to be found within the aforesaid limits.

VI. Now, that the aforesaid region, thus by us granted and described, may be eminently distinguished above all other regions of that territory, and decorated with more ample titles, KNOW YE, that WE, of our more special grace, certain knowledge, and mere motion, have thought fit that the said region and islands be erected into a PROVINCE, as out of the plenitude of our royal power and prerogative, WE do, for US, our heirs and successors, ERECT and INCORPORATE the same into a PROVINCE, and nominate the same MARYLAND, by which name WE will that it shall from henceforth be called.

VII. And forasmuch as WE have above made and ordained the aforesaid now baron of BALTIMORE, the true LORD and PROPRIETARY of the whole PROVINCE aforesaid, KNOW YE therefore further, that WE, for US, our heirs and successors, do grant unto the said now baron, (in whose fidelity, prudence, justice, and provident circumspection of mind, WE repose the greatest confidence) and to his heirs, for the good and happy government of the said PROVINCE, free, full, and absolute power, by the tenor of these presents, to ordain, make, and enact LAWS, of what kind soever, according to their sound discretions, whether relating to the public state of the said PROVINCE, or the private utility of individuals, of and with the advice, assent, and approbation of the free men of the same PROVINCE, or of the greater part of them, or of their delegates or deputies, whom WE will shall be called together for the framing of LAWS, when, and as often as need shall require, by the aforesaid now baron of BALTIMORE, and his heirs, and in the form which shall seem best to him or them, and the same to publish under the seal of the aforesaid now baron of BALTIMORE and his heirs, and duly to execute the same upon all persons, for the time being, within the aforesaid PROVINCE, and the limits thereof, or under his or their government and power, in sailing towards MARYLAND, or thence returning, outward-bound, either to *England*, or elsewhere, whether to any other part of our, or of any foreign dominions, wheresoever established, by the imposition of fines, imprisonment, and other punishment whatsoever; even if it be necessary, and the guilty of the offence require it, by privation of

member, or life, by him the aforesaid now baron of BALTIMORE, and his hiers, or by his or their deputy, lieutenant, judges, justices, magistrates, officers, and ministers, to be constituted and appointed according to the tenor and true intent of these presents, and to constitute and ordian judges, justices, magistrates and officers, of what kind, for what cause, and with what power soever, within that land, and the sea of those parts, and in such form as to the said now baron of BALTIMORE, or his heirs, shall seem most fitting: and also to remit, release, pardon, and abolish, all crimes and offences whatsoever against such laws, whether before, or after judgment passed; and to do all and singular other things belonging to the completion of justice, and to courts, protorian judicatories, and tribunals, judicial forms and modes of proceeding, although express mention thereof in these presents be not made; and, by judges by them delegated, to award process, hold pleas, and determine in those courts, protorian judicatories, and tribunals, in all actions, suits, causes, and matters whatsoever, as well criminal as personal, real and mixed, and protorian: Which said laws, so to be published as abovesaid, **WE** will, enjoin, charge, and command, to be most absolute and firm in law, and to be kept in those parts by all the subjects and liege-men of us, our heirs and successors, so far as they concern them, and to be inviolably observed under the penalties therein expressed, or to be expressed. So **NEVERTHELESS**, that the laws aforesaid be consonant to reason, and be not repugnant or contrary, but (so far as conveniently may be) agreeable to the laws, statutes, customs and rights of this our kingdom of *England*.

VIII. And forasmuch as, in the government of so great a **PROVINCE**, sudden accidents may frequently happen, to which it will be necessary to apply a remedy, before the freeholders of the said **PROVINCE**, their delegates, or deputies, can be called together for the framing of laws; neither will it be fit that so great a number of people should immediately on such emergent occasion, be called together, **WE**, therefore, for the better government of so great a **PROVINCE**, do will and ordain, and by these presents, for us, our heirs and successors, do grant unto the said now baron of Baltimore; and his heirs, by themselves, or by their magistrates and officers, thereunto duly to be constituted as aforesaid, may, and can make and constitute fit and wholesome ordinances from time to time, to be kept and observ-

ed within the PROVINCE aforesaid, as well for the conservation of the peace, as for the better government of the people inhabiting therein, and publicly to notify the same to all persons whom the same in any wise do or may affect. Which ordinances, WE will to be inviolably observed within the said PROVINCE, under the pains to be expressed in the same. So that the said ordinances be consonant to reason, and be not repugnant nor contrary, but (so far as conveniently may be done) agreeably to the laws, statutes, or rights of our kingdom of *England*; and so that the same ordinances do not, in any sort, extend to oblige, bind, charge, or take away the right or interest of any person or persons, of, or in member, life, freehold, goods or chattels.

IX. Furthermore, that the new colony may more happily increase by a multitude of people resorting thither, and at the same time may be more firmly secured from the incursions of savages, or of other enemies, pirates, and ravagers: WE, therefore, for us, our heirs and successors, do by these presents give and grant power, license and liberty, to all the liege-men and subjects, present and future, of us, our heirs and successors, except such to whom it shall be expressly forbidden, to transport themselves and their families to the said PROVINCE, with fitting vessels, and suitable provisions, and therein to settle, dwell, and inhabit; and to build and fortify castles, forts, and other places of strength, at the appointment of the aforesaid now baron of BALTIMORE, and his heirs, for the public and their own defence; the statute of fugitives, or any other whatsoever to the contrary of the premises in any wise notwithstanding.

X. We will also, out of our more abundant grace, for us, our heirs and successors, do firmly charge, constitute, ordain, and command, that the said PROVINCE be of our allegiance; and that all and singular the subjects and liege-men of us, our heirs and successors, transplanted, or hereafter to be transplanted into the PROVINCE aforesaid, and the children of them, and of others their descendants, whether already born there, or hereafter to be born, be and shall be natives and liege-men of us, our heirs and successors, of our kingdom of *England* and *Ireland*; and in all things shall be held, treated, reputed, and esteemed as the faithful liege-men of us, and our heirs and successors, born within our kingdom of *England*; also lands, tenements, revenues, services, and other hereditaments whatsoever, within our kingdom of *England*, and other our dominions, to inherit, or otherwise

purchase, receive, take, have, hold, buy, and possess, and the same to use and enjoy, and the same to give, sell, alien, and bequeath; and likewise all privileges, franchises and liberties of this our kingdom of *England*, freely, quietly, and peaceably to have and possess, and the same may use and enjoy in the same manner as our liege-men born, or to be born within our said kingdom of *England*, without impediment, molestation, vexation, impeachment, or grievance of us, or any of our heirs or successors; any statute, act, ordinance, or provision to the contrary thereof, notwithstanding.

XI. Furthermore, that our subjects may be incited to undertake this expedition with a ready and cheerful mind: Know YE, that WE, of our especial grace, certain knowledge, and mere motion, do, by the tenor of these presents, give and grant, as well to the aforesaid baron of BALTIMORE, and to his heirs, as to all other persons who shall from time to time repair to the said province, either for the sake of inhabiting, or of trading with the inhabitants of the province aforesaid, full license to ship and lade in any the ports of us, our heirs and successors, all and singular their goods, as well moveable as immoveable, wares and merchandizes, likewise grain of what sort soever, and other things whatsoever necessary for food and clothing, by the laws and statutes of our kingdoms and dominions, not prohibited to be transported out of the said kingdoms; and the same to transport, by themselves, or their servants or assigns, into the said PROVINCE, without the impediment or molestation of us, our heirs or successors, or of any officers of us, our heirs or successors, (SAVING unto us, our heirs and successors, the impositions, subsidies, customs, and other dues payable for the same goods and merchandizes,) any statute, act, ordinance, or other thing whatsoever to the contrary notwithstanding.

XII. But because, that in so remote a region, placed among so many barbarous nations, the incursions as well of the barbarians themselves, as of other enemies, pirates and ravagers, probably will be feared, therefore WE have given, and for us, our heirs, and successors, do give by these presents, as full and unrestrained power, as any captain-general of an army ever hath had, unto the aforesaid now baron of BALTIMORE, and to his heirs and assigns, by themselves, or by their captains, or other officers, to summon to their standards, or to array all men, of whatsoever condition, or wheresoever born, for the time being,

in the said province of MARYLAND, to wage war, and to pursue, even beyond the limits of their province, the enemies and ravagers aforesaid, infesting those parts by land and by sea, and (if God shall grant it) to vanquish and captivate them, and the captives to put to death, or, according to their discretion, to save, and to do all other and singular the things which appertain, or have been accustomed to appertain unto the authority and office of a captain-general of an army.

XIII. We also will, and by this our CHARTER, do give unto the aforesaid now baron of BALTIMORE, and to his heirs and assigns, power, liberty, and authority, that, in case of rebellion, sudden tumult, or sedition, if any (which God forbid) should happen to arise, whether upon land within the province aforesaid, or upon the high sea in making a voyage to the said province of MARYLAND, or in returning thence, they may, by themselves, or by their captains, or other officers, thereunto deputed under their seals (to whom WE, for US, our heirs and successors, by these presents, do give and grant the fullest power and authority) exercise martial law as freely, and in as ample manner and form, as any captain-general of an army, by virtue of his office may, or hath accustomed to use the same, against the seditious authors of innovations in those parts, withdrawing themselves from the government of him or them, refusing to serve in war, flying over to the enemy, exceeding their leave of absence, deserters, or otherwise howsoever offending against the rule, law, or discipline of war.

XIV. Moreover, lest in so remote and far distant a region, every access to honours and dignities may seem to be precluded, and utterly barred, to men well born, who are preparing to engage in the present expedition, and desirous of deserving well, both in peace and war, of us, and our kingdoms; for this cause, WE, for US, and heirs and successors, do give free and plenary power to the aforesaid now baron of Baltimore, and to his heirs and assigns, to confer favours, rewards and honours, upon such subjects, inhabiting within the province aforesaid, as shall be well deserving, and to adorn them with whatsoever titles and dignities they shall appoint; (so that they be not such as are now used in *England*,) also to erect and incorporate towns into boroughs, and boroughs into cities, with suitable privileges and immunities, according to the merits of the inhabitants, and convenience of the places; and to do all and singular other things

in the premises, which to him or them shall seem fitting and convenient; even although they shall be such as, in their own nature, require a more special commandment and warrant than in these presents may be expressed.

XV. We will also, and by these presents do, for us, our heirs and successors, give and grant license by this our CHARTER, unto the aforesaid now baron of BALTIMORE, his heirs and assigns, and to all persons whatsoever, who are, or shall be, residents and inhabitants of the province aforesaid, freely to import and unlade, by themselves, their servants, factors or assigns, all wares and merchandizes whatsoever, which shall be collected out of the fruits and commodities of the said province, whether the product of the land or the sea, into any of the ports whatsoever of us, our heirs and successors, of *England* or *Ireland*, or otherwise to dispose of the same there; and, if need be, within one year, to be computed immediately from the time of unlading thereof, to lade the same merchandizes again, in the same, or other ships, and to export the same to any other countries they shall think proper, whether belonging to us, or any foreign power, which shall be in amity with us, our heirs or successors: Provided always, that they be bound to pay for the same to us, our heirs and successors, such customs and impositions, subsidies and taxes, as our other subjects of the kingdom of ENGLAND, for the time being, shall be bound to pay, beyond which we will that the inhabitants of the aforesaid province of the said land, called MARYLAND, shall not be burdened.

XVI. And furthermore, of our more ample special grace, and of our certain knowledge, and mere motion, We do, for us, our heirs and successors, grant unto the aforesaid now baron of BALTIMORE, his heirs and assigns, full and absolute power and authority to make, erect, and constitute, within the province of MARYLAND, and the islands and islets aforesaid, such, and so many sea ports, harbours, creeks, and other places of unlading and discharge of goods and merchandizes out of ships, boats, and other vessels, and of lading in the same, and in so many, and such places, and with such rights, jurisdictions, liberties, and privileges, unto such ports respecting, as to him or them shall seem most expedient. And, that all and every the ships, boats and other vessels whatsoever, coming to, or going from the province aforesaid, for the sake of merchandizing, shall be laden and unladen at such ports only as shall be so erected and con-

stituted by the said now baron of BALTIMORE, his heirs and assigns, any usage, custom, or any other thing whatsoever to the contrary notwithstanding. Saving always to us, our heir and successors, and to all the subjects of our kingdoms of *England* and *Ireland*, of us, our heirs and successors, the liberty of fishing for sea-fish, as well in the seas, bays, straits and navigable rivers, as in the harbours, bays and creeks of the province aforesaid; and the privilege of salting and drying fish on the shores of the same province; and, for that cause, to cut down and take hedging-wood and twigs there growing, and to build huts and cabins, necessary in this behalf, in the same manner as heretofore they reasonably might, or have used to do. Which liberties and privileges, the said subjects of us, our heirs and successors, shall enjoy without notable damage or injury in any wise to be done to the aforesaid now baron of Baltimore, his heirs or assigns, or to the residents and inhabitants of the same province in the ports, creeks, and shores aforesaid, and especially in the woods and trees there growing. And if any person shall do damage or injury of this kind, he shall incur the peril and pain of the heavy displeasure of us, our heirs and successors, and of the due chastisement of the laws, besides making satisfaction.

XVII. Moreover, We will, appoint, and ordain, and by these presents, for us, our heirs and successors, do grant unto the aforesaid now baron of BALTIMORE, his heirs and assigns, from time to time, for ever, shall have, and enjoy the taxes and subsidies payable, or arriving within the ports, harbours, and other creeks and places aforesaid, within the province aforesaid, for wares bought and sold, and things there to be laden, or unladen, to be reasonably assessed by them, and the people there as aforesaid, on emergent occasion; to whom we grant power by these presents, for us, our heirs and successors, to assess and impose the said taxes and subsidies there, upon just cause, and in due proportion.

XVIII. And furthermore, of our special grace, and certain knowledge, and mere motion, We have given, granted, and confirmed, and by these presents, for us, our heirs, and successors, do give, grant, and confirm, unto the aforesaid now baron of BALTIMORE, his heirs and assigns, full and absolute license, power and authority, that he, the aforesaid now baron of BALTIMORE, his heirs and assigns, from time to time hereafter, for ever, may and can, at his or their will and pleasure, assign, alien, grant, demise, or enfeoff so many, such, and proportionate

parts and parcels of the premises, to any person or persons willing to purchase the same, as they shall think convenient, to have and to hold to the same person or persons willing to take or purchase the same, and his and their heirs and assigns, in fee simple, or fee tail, or for term of life, lives, or years; to hold of the aforesaid now baron of BALTIMORE, his heirs and assigns, by so many, such, and so great services, customs and rents of THIS KIND, as to the same now baron of BALTIMORE, his heirs and assigns, shall seem fit and agreeable, and not immediately of us, our heirs or successors. And we do give, and by these presents, for us, our heirs and successors, do grant to the same person and persons, and to each and every of them, license, authority, and power, that such person and persons, may take the premises, or any parcel thereof, of the aforesaid now baron of BALTIMORE, his heirs and assigns, and hold the same to them and their assigns, or their heirs, of the aforesaid baron of BALTIMORE, his heirs and assigns, of what estate of inheritance soever, in fee simple or fee tail, or otherwise, as to them and the now baron of BALTIMORE, his heirs and assigns, shall seem expedient; the statute made in the parliament of lord EDWARD, son of king HENRY, late king of *England*, our progenitor, commonly called the "STATUTE QUIA EMPTORES TERRARUM," heretofore published in our kingdom of *England*, or any other statute, act, ordinance, usage, law, or custom, or any other thing, cause or matter, to the contrary thereof, heretofore had, done, published, ordained or provided to the contrary thereof notwithstanding.

XIX. We, also, by these presents, do give and grant license to the same baron of BALTIMORE, and to his heirs, to erect any parcels of land within the province aforesaid, into manors, and in every of those manors, to have and to hold a court-baron, and all things which to a court-baron do belong; and to have and to keep view of frank-pledge, for the conservation of the peace and better government of those parts, by themselves and their stewards, or by the lords, for the time being to be deputed, of other of those manors when they shall be constituted, and in the same to exercise all things to the view of frank-pledge belonging.

XX. And further We will, and do, by these presents, for us, our heirs and successors, covenant and grant to, and with the aforesaid now baron of BALTIMORE, his heirs and assigns, that we, our heirs and successors, at no time hereafter, will impose, or make or cause to be imposed, any impositions, customs, or other

taxations, quotas or contributions whatsoever, in or upon the residents or inhabitants of the province aforesaid, for their goods, lands, or tenements within the same province, or upon any tenements, lands, goods or chattels within the province aforesaid, or in or upon any goods or merchandizes within the province aforesaid, or within the ports or harbours of the said province, to be laden or unladen: And we will and do, for us, our heirs and successors, enjoin and command that this our declaration shall, from time to time, be received and allowed in all our courts and pretorian judicatories, and before all the judges whatsoever of us, our heirs and successors, for a sufficient and lawful discharge, payment, and acquittance thereof, charging all and singular the officers and ministers of us; our heirs and successors, and enjoining them, under our heavy displeasure, that they do not at any time presume to attempt any thing to the contrary of the premises, or that may in any wise contravene the same, but that they, at all times, as is fitting, do aid and assist the aforesaid now baron of BALTIMORE, and his heirs, and the aforesaid inhabitants and merchants of the province of MARYLAND aforesaid, and their servants and ministers, factors and assigns, in the fullest use and enjoyment of this our CHARTER.

XXI. And furthermore We will, and by these presents, for us, our heirs and successors, do grant unto the aforesaid now baron of BALTIMORE, his heirs and assigns, and to the freeholders and inhabitants of the said province, both present and to come, and to every of them, that the said province, and the freeholders or inhabitants of the said colony or country, shall not henceforth be held or reputed a member or part of the land of Virginia, or of any other colony already transported, or hereafter to be transported, or be dependent on the same, or subordinate in any kind of government, from which we do separate both the said province, and inhabitants thereof, and by these presents do will to be distinct, and that they may be immediately subject to our crown of *England*, and dependent on the same for ever.

XXII. And if, peradventure, hereafter it may happen, that any doubts or questions should arise concerning the true sense and meaning of any word, clause, or sentence, contained in this our present CHARTER, we will, charge and command, THAT interpretation to be applied, always, and in all things, and in all our courts and judicatories whatsoever, to obtain which shall be judged to be the more beneficial, profitable, and favour-

able to the aforesaid now baron of BALTIMORE, his heirs and assigns: provided always, that no interpretation thereof be made, whereby God's holy and true christian religion, or the allegiance due to us, our heirs and successors, may in any wise suffer by change, prejudice, or diminution; although express motion* be not made in these presents of the true yearly value or certainty of the premises, or of any part thereof, or of other gifts and grants made by us, our heirs and predecessors, unto the said now lord BALTIMORE, or any statute, act, ordinance, provision, proclamation or restraint, heretofore had, made, published, ordained or provided, or any other thing, cause, or matter whatsoever, to the contrary thereof in any wise notwithstanding.

XXIII. In witness whereof We have caused these our letters to be made patent. Witness ourself at *Westminster*, the twentieth day of *June*, in the eighth year of our reign.

* Mr. Bacon, in his edition of the charter, and the translation as above, has here subjoined the following note.—“The remainder from this mark * is copied from the old translation, published (together with some assembly proceedings) by order of the lower house, in the year 1725.” To the same sentence, (to wit, *Ea quod expressa Mentio*, &c.) of the original latin, in the opposite page, he has subjoined another note, as follows:—“So endeth the attested copy, taken in the year 1758, from the original record remaining in the Chapel of the Rolls, and signed by *Henry Rooke* clerk of the rolls, which was lent me by his excellency *Horatio Sharpe*, esqr., from whence the above” (the charter in the original Latin, which is here omitted,) “is transcribed.—The said copy is entitled at the head, *Tertia Pars Patentium de Anno Regni CAROLI Octavo*; and at the end is written as in sect. xxiii.”

N. B. A copy of the charter of Maryland, in the original Latin, (taken from Bacon's Collection of the Laws of Maryland,) is inserted in Hazard's Collections, vol. 1, p. 327.

HISTORY OF MARYLAND.

CHAPTER I.

Cecilius, lord Baltimore, prepares for sending out a colony—The Virginians petition against his charter—Decision thereupon against them—Lord Baltimore appoints his brother to conduct the colony—Their arrival in the Chesapeake—Their reception by the Virginians—They explore the Patowmack—The governor fixes upon St. Mary's for the first settlement—Circumstances favorable to them—Proceedings of the colonists after landing—Great harmony between the natives and colonists—Interrupted by Clayborne and his party—The first assembly called and held—Clayborne resorts to open military force—The lord proprietor's instructions relative to grants of lands—Grants of small lots in the town of St. Mary's—The nature of the first form of government of the colony—An ordinance for that purpose—Proclamation in England against emigration—The isle of Kent reduced to lord Baltimore's government—The county of St. Mary's organized—An assembly of the province called—The second assembly of the province meet—The assembly take into consideration the laws sent in by the proprietor—The laws sent rejected—Courts of justice meet—Proceedings therein against Clayborne's party—The inhabitants of the isle of Kent refuse to submit—Governor Calvert proceeds with a military force against them—Secretary Lewger authorised to hold the assembly—Act of attainder against William Clayborne—Trial of Thomas Smith, one of Clayborne's men—Inquiry by the assembly into the conduct of captain Cornwallis—Resolution of the assembly relative to servants—The assembly dissolved—The lord proprietor refuses his assent to the laws enacted by the assembly—William Clayborne's petition to the king in council, and order thereupon—The nature of the provincial traffic with the Indians—Their coasting trade—Their trade to Europe—The state of religion among the colonists—The nature of the administration of justice with them.

Cecilius Calvert, baron of Baltimore, having, on the twentieth of June, 1632, obtained his charter for the province of Maryland, as before mentioned, had now to make preparations for carrying into effect his father's intended plan of colonization. The procuring a sufficient number of colonists, and the furnishing them with all conveniences and necessities essential to a residence in a remote country, which was as yet a wilderness, unavoidably protracted the time of their departure from England to some considerable length.

CHAP. I.
1632.

Cecilius, lord Baltimore, prepares for sending out a colony.

CHAP. I. In the mean time, however, much discontent was industriously excited among the planters in Virginia, by inducing them to suppose, that the very soil upon which they trod, and which they had earned by their fatigues and dangers, was about to be taken from under their feet, and by this charter transferred to others. A petition therefore was framed in the name of the planters, and in May, 1633, presented to his majesty, in which they remonstrate, "That some grants have been lately obtained, of a great portion of lands and territories of the colony there, being the places of their traffic, and so near to their habitations, as will give a general disheartening to the planters, if they be divided into several governments, and a bar put to that trade which they have long since exercised towards their supportation and relief, under the confidence of his majesty's royal and gracious intentions towards them." The king referred the consideration of this petition to his privy-council, and agreeably to this reference, the council, on the fourth of June, in the same year, made an order, in which they appointed the twenty-eighth of that month, when the business should be heard, and that all parties interested should then attend. This was done accordingly, and their lordships having heard the cause, ordered that the lord Baltimore and the planters of Virginia should meet together* between that time and the third of July, 1633, and endeavour to accommodate their controversy in a friendly manner. Also, that the propositions made by either party should be set down in writing, with their several answers and reasons, to be presented to the board on that day. This was likewise accordingly done, and on the third of July, same year, it was finally ordered, "That the lord Baltimore should be left to his patent, and the other parties to the course of law, according to their desire. But, for the preventing of further questions and differences, their lordships did also think fit and order, that, things standing as they do, the planters on either side, shall have free traffic and commerce each with the other, and that neither party shall receive any fugitive persons belonging to the other, nor do any act which may draw on a war from the natives upon either of them: And, lastly, that they shall sincerely entertain all good correspondence, and assist each other on all occasions, in such manner as becometh fellow-subjects and members of the same state."†

1633.
The Virginians
petition
against his
charter.

Decision
against
them.

* This must have meant, that the planters, by their agents or attorneys in England, should meet the lord Baltimore.

† See this order in council at large, in note (I) at the end of this volume.

As we are at liberty at this day to judge of this transaction calmly and dispassionately, it is impossible not to perceive, that the planters in Virginia (by whom it may be supposed to be meant, in the above order, the actual settlers and colonists resident in Virginia, and not any of the numerous members of the old Virginia company) were instigated to this opposition to lord Baltimore's charter by a few influential persons among them, (particularly William Clayborne) who sought to obtain a property in different portions of the territories of Virginia, without putting themselves to the trouble or expense of obtaining a legal conveyance or charter for the same. Unquestionably by the laws of England, under which they professed to live, the right of granting a property in the soil of the country, was originally, after its discovery by Cabot, vested in the king, and subsequently in the treasurer and company of Virginia under the second and third charters from the king. But as the right of making grants of the same, heretofore appertaining to the company, was taken away by the judgment in the court of king's bench, under the *quo warranto*, which judgment was certainly binding until legally reversed, such right, by the laws of the kingdom, reverted back again to the king, according to the feudal principles of the monarchy. The planters in Virginia, then, had really no interest in the question. None of their individual rights or particular plantation, on which they lived, were at all invaded. We may, indeed, adopt the observations of a late historian of Virginia upon this subject:—"This grant to lord Baltimore did not interfere with the rights of former settlers, or with the government of Virginia. His object was the establishment of a new colony, which would be her friend and neighbour and ally, against the assaults of the Indians or machinations of distant powers. The prosperity and reputation of the nation would be advanced by new settlements; and an immense territory was yet reserved to Virginia, far exceeding her wants and her powers. In every point of view the transfer appears judicious and salutary."*—It must be acknowledged, however, that these observations of this historian are rather inconsistent with his ill-timed invective in the same page against the members of the council, principally on account of the preceding order. It does not appear from the order, that "*they acknowledged the justice of the claim of the planters,*" as he alleges. The *justice* of the claim could be only

* Burk's Hist. of Virg. vol. 2, p. 89.

CHAP. I. **1633.** between the king and those persons, whose names, as inserted in the second charter, (constituting the old Virginia company,) form a very large list of the nobility and gentry of England, to whom the territories of Virginia then in truth belonged,* if they did not to the crown. The *justice* of the judgment on the *quo warranto*, it is true, appears at this day to have been questionable, but that of the preceding order the reverse.

Lord Baltimore appoints his brother to conduct the colony. His lordship being now invested, as he supposed, with a fair title to his province, and having nearly completed the necessary preparations for the emigration of the colonists, contemplated at first to have attended them himself in person; but afterwards changing his mind, from what cause we are not informed, he appointed his brother, Leonard Calvert, Esq. to go in his stead, in the character of governor,† and joined in commission with him Jeremy Hawley and Thomas Cornwallis, Esqrs. as assistants or counsellors.‡ The number of colonists consisted of about two hundred, of whom the names of the chief or principal characters are mentioned in history, as follows, Richard Gerard, Edward Winter, Frederick Winter, and Henry Wiseman, Esqrs.; Mr. John Saunders, Mr. Edward Cranfield, Mr. Henry Green, Mr. Nicholas Fairfax, Mr. John Baxter, Mr. Thomas Dorrel, captain John Hill, Mr. John Medcalfe, and Mr. William Saire. Many of these are said to have been gentlemen of fortune, and the most, if not all of them, were Roman Catholics.§

* They had expended more than £100,000 sterling of their own estates, in the support of the colony in Virginia, at the time of the dissolution of their charters. Holmes's Annals, vol. 1, p. 233.

† In most of the early public acts of the province, he is commonly styled "his lordship's *lieutenant-general*," &c.; but as the term *governor* is a word of the same import, and sometimes used in some of the old records of the province, and is also of more modern usage, and therefore more intelligible, it is here adopted. The term *lieutenant-general*, as thus used in the early colonization of the province, was probably adopted from that applied to the king's viceroy or governor of Ireland, who was at this period so termed.

‡ This commission, it seems, is not extant among any of the records of the province. *Kilty's Landholder's Assist.* p. 64.—The term *assistant* seems to have been in use, about this time, as synonymous to that of *councillor*. It appears to have been so used in Massachusetts on the first settlement of New Plymouth. See the Extracts from the New Plymouth Records, published in Hazard's Collections, vol. 1. p. 413.

§ The above list of principal colonists, who first emigrated to Maryland, is taken from *Oldmixon's Brit. Emp. in Amer.* vol. 1, p. 184, and the *Mod. Univ. Hist.* vol. 40, p. 466; the latter apparently copying it from the former.—"George Calvert, Esq. brother to the governor," is also mentioned in both these histories as one "of the principal persons," who came with the first colonists. But as I do not find his name, or any allusion to it in any of the records of the province,

They sailed from Cowes, in the Isle of Wight, on the 22d of November, 1633, and taking the old route by the Azores and West Indies, stopped at the islands of St. Christopher's and Barbadoes, where they staid some time, most probably for the purpose of timing their arrival in the Chesapeake in the most favorable season of the year for colonization in that climate. It was, therefore, the 24th of February following, (1634, new style,) when they arrived off Point Comfort in Virginia. In consequence, as it would seem, of written commands from the king,* no molestation or hindrance to their pursuits was offered by the government of Virginia; and it may be inferred, that, in obedience to those commands, all such "assistance" and supplies as the colony of Virginia could afford, were furnished at their request. Here also, as it appears, an interview took place between governor Calvert and captain Clayborne, when the governor intimated to Clayborne, that his settlements on the isle of Kent would be considered as a part of the Maryland plantation. On the third of March the Maryland colonists proceeded from Point Comfort to Patowmack. Governor Calvert, not being apprised, perhaps, of any former names appropriated to the two capes or points of land at the mouth of the Patowmack river, called the south point St. Gregory's and the north point St. Michael's; but as they are both now known by other appellations, the southern being called Smith's point, from the celebrated founder of Virginia, captain John Smith, and the northern, Point Look-out, it is probable that they had received these denominations before the arrival of the Maryland colony.

Sailing up the Patowmack about fourteen leagues, they came to an island called *Heron* island, and anchored under another neighbouring isle, to which they gave the name of *St. Clements*.†

I have omitted it, presuming, that, if the first lord Baltimore (George Calvert) left a son of that name, and he had accompanied the first colonists to Maryland, he would have been recognized in some station or early proceedings of the colony. But he might possibly have been a younger brother to both lord *Cecilius* and *Leonard* (the governor,) and coming out merely to accompany his brother, might have returned again to England soon after their arrival. This, together with the loss of most of the earliest records of the province, for the two or three first years, may account for his name not now appearing in any provincial record.

* The substance of these commands appears from a letter of Sir John Harvey, quoted by Chalmers, (Annals, ch. ix. and note 17,) who states it thus:—"The king desirous to encourage the noble purpose of lord Baltimore, required, that all lawful assistance should be given him, in seating himself and his associates in Maryland."

† These names do not appear in either Griffith's map of Maryland, or Madison's of Virginia, the two most modern. In Griffith's map an island is placed off

CHAP. I.
1634.
Their departure from England and arrival in the Chesapeake.

CHAP. I. Here the governor landed, and setting up a cross, in the Roman Catholic manner, took formal possession of the country,—“for our Saviour, and for our sovereign lord the king of England.”
1634. In order to make discoveries, the governor here left his ships, and taking two boats, or pinnaces as they were then called, proceeded up the Patowmack about four leagues, and landed on the south or Virginia side of the river; but found that the Indians had fled from them through fear. He thence still proceeded up the river about nine leagues, and came to an Indian town, on the Virginia side of the river, called Patowmack town, said to be the place now called New Marlborough; where the chief, called the *Werowance*, being an infant, the territory was governed in his minority by his uncle, whose name was *Archihau*. By him they were received in a very friendly manner.* From this town they sailed up the Patowmack a considerable distance further, to *Piscataway* creek; where they found many Indians assembled, and among them an Englishman, captain Henry Fleet, who had lived there several years in great esteem with the natives. Through the influence of captain Fleet, the *Werowance* or chief, of the tribe there assembled, was prevailed upon to go on board the governor’s pinnace. The governor asked him, whether he was willing, that he and his people should settle in his country, in case they found a place convenient for them. The werowance replied, “I will not bid you go, neither will I bid you stay, but you may use your own discretion.” The Indians on shore, finding that the werowance staid on board longer than they expected, crowded down to the water side, to look after him, fearing that the English had killed him; and they were not satisfied till he showed himself to appease them.

The governor, on reflection, thinking that it could not, perhaps, be so advisable to settle so high up the river, in the infancy of the colony; and influenced somewhat, probably, by the cautious answer of the werowance, determined to seek for a settlement further down the river. He therefore returned down the Patowmack to St. Clement’s isle again, taking captain Fleet

Clement’s branch or river, which empties into the Patowmack, and which is there called *Blackstone’s* island; but in Madison’s map, Blackstone’s island is placed higher up the Patowmack. It is most probable, however, that the island opposite to the mouth of *Clement’s* branch is the island to which at this time they affixed the name of St. Clement’s. In a loose estimation, it will nearly answer the distance mentioned up the Patowmack, fourteen leagues or forty-two miles.

* See note (II) at the end of this volume.

with him. They then proceeded to a small river on the north side of the Patowmack, within four or five leagues of its mouth, which the governor called St. George's river. Sailing up this small river about four leagues, they came to an Indian town, called by the natives—*Yoamaco*, from whence tribe here inhabiting, was called *Yoamacoes*. CHAP. I.
1634.

The reader will recollect, that it has been before mentioned, that Powhatan's territories, over which he was emperor or grand chief, was said to extend along the lowlands upon the Chesapeake, from Cape Henry to the mouth of Patuxent, in Maryland, and that his empire consisted of at least forty different tribes.* As governor Calvert, in his present exploremment of the Patowmack, found, it seems, several distinct independent chiefs, called werowances, it is probable, that they were the chiefs of so many distinct tribes, who formerly composed a part of that grand confederacy, which had existed under Powhatan; called, from him, the Powhatan confederacy, in contradistinction to the two other grand confederacies, denominated the Manahoacs and the Monocans. But, as Powhatan had now been dead some years, it does not appear clearly, whether his successor was, at the time of the arrival of our colonists, the grand chief or emperor of the whole of the former Powhatan confederacy, or whether the Yoamacoes considered themselves as belonging to that confederacy, and subject to Opitchapan, who was Powhatan's successor.

The governor, having landed here, entered into a conference or treaty with the werowance, and acquainted him with the cause of his coming; to which the Indian said little, probably not wishing to encourage a settlement among them; but, inviting him to his cabin, he entertained him as kindly as he could, and at night gave him his own bed to lie on. The next day he showed him the country; and the governor, determining to make the first settlement here, sent orders to the ship and boats to come to him. To pave the way to his peaceable admission into the country, he presented the werowance, and principal men of the town, with some English cloth, axes, hoes, and knives, which they accepted with pleasure, and freely consented that he and his company should dwell in one part of their town, reserving the other for themselves. Those Indians, who inhabited that part which was assigned to the English, readily abandoned

* See Mr. Charles Thompson's note (5,) in the Appendix to Jefferson's Notes on Virginia. Also, Burk's Hist. of Virg. vol. 1, p. 112.

CHAP. I. their huts to them. The natives further agreed to leave the
 1634. whole town to the English, as soon as they could gather their corn ; which they faithfully performed : and it was further stipulated, that until that time, the two nations should live in a friendly manner together. If any injury was done on either part, the nation offending was to make satisfaction.* The governor then, on the 27th of March, 1634, caused the colonists to land, and according to the agreement, take possession of the town, which they named *St. Mary's*.

Circum-
stances fa-
vourable to
them.

A circumstance is mentioned to have occurred at this time, which very much facilitated this treaty with the Indians. The Susquehanocks, who lived about the head of the bay, were in the practice of making incursions on their neighbours, partly for dominion, and partly for booty ; of which last, women were most desired by them.† The Yoamacoës, fearing these Susquehanocks, had, a year before the Maryland colony arrived, resolved to desert their habitations, and remove higher into the country. Many of them were actually gone, and the rest were preparing to follow them, about the time when the English arrived : so that the voluntary surrender of their town is easily accounted for.

Proceed-
ings of the
colonists
after land-
ing.

The first thing the governor caused to be done after the colonists were landed, was to erect two buildings, one for a guard house, and the other for a store house. Some of the colonists he also set to work, in making preparations for the planting of corn. In a few days afterwards, the governor received a friendly visit from Sir John Harvey, then governor of Virginia. From this circumstance it may be inferred, that however unfavourably the historians of Virginia may have represented the character of this governor, he did not enter into the opposition which had been exerted in that province against lord Baltimore's charter, and the settlement of the Maryland colony ; or at least he chose to conform to his majesty's recommendation of the Maryland colony, as before mentioned.‡—We are not informed of any material incidents relative to governor Harvey's visit. While he

* See note (III.) at the end of this volume.

† Stealing of women seems to have been a practice incident to the early periods of a state of society. It was common with both the Greeks and Barbarians, at the time when Paris run away with Helen, which occasioned the siege of Troy. It was so common, says Thucydides, that no woman durst live near the sea coast. Anc. Univ. Hist. vol. 5, p. 551.

‡ See a note (IV.) at the end of this volume.

remained there governor Calvert received also the visits of several Indian Werowances from the interior parts of the country; among others came the king of Patuxent, who had formerly been a prisoner to the English in Virginia. To please the Indians, the governor made an entertainment on board of the ship then at anchor in the river: the king of Patuxent was placed at the table, in a kind of state between the governor of Virginia and the governor of Maryland. But, an incident occurred, which threatened to destroy the pleasure of the feast: a Patuxent Indian coming on board, and seeing his king thus seated, started back, and refused to enter into the cabin, supposing that his king was confined there as a captive, and would have leaped overboard, had not the king himself come and satisfied him, that he was in no danger.

CHAP. 1.
1634.

The store house being finished, and it becoming necessary to unload the ship and bring the stores for the colony on shore, the governor, thinking that doing it with a little pomp and state would impress the natives with respect for the colonists, ordered it to be done with as much solemnity as they could. The colours were brought on shore, and the colonists were all paraded under arms. Volleys of musquetry were fired, which were answered by discharges of cannon on board the ship. The two kings or werowances of Patuxent and Yoamaco, being both present at this exhibition, with many other Indians of Yoamaco, the former took that occasion to advise the Indians of Yoamaco to be careful to keep the league they had made with the English. He remained in the town several days afterwards; and, it is said, that when he took his leave, he made this remarkable speech to the governor: "I love the English so well, that if they should go about to kill me, if I had so much breath as to speak, I would command the people not to revenge my death; for I know they would not do such a thing, except it were through my own fault."*

During the remainder of the year, while the English and Indians lived together in St. Mary's, according to their stipulation, the utmost harmony appears to have prevailed among them. The natives went every day to hunt with the "new comers," for deer and turkeys; which, when they had caught, being more expert at it, they either gave to the English, or sold for knives, beads, and such trifles. They also supplied them with fish in plenty. As a certain mark of the entire confidence, which these

Great harmony between the natives and colonists.

* Oldmixon's Brit. Emp. in Amer. vol. 1, p. 134, or 138.—Mod. Univ. Hist. vol. 40, p. 467.

CHAP. I. unsuspecting people placed in the colonists, their women and
 1634. children became, in some measure, domesticated in the English families.

We have here to express a regret, that the loss of most of the early records of the province, in about ten years after this period, during the civil commotions which agitated the mother country, and had extended to the colonies, has irreparably deprived us of other interesting particulars of the first transactions of the Maryland colony.*

The arrival of the colony in the early part of the year, was attended with such fortunate circumstances, that we cannot but suppose, that it was intentionally so done, in order to have time to erect habitations against the succeeding winter, and to raise sufficient corn for their next year's subsistence. It seems, however, that they had taken the precaution to bring along with them from Barbadoes, an additional supply of Indian corn, beyond the flour and bread of their English stores. They had, very judiciously, preconcerted their departure from England, so as to pass the winter months in the West Indies, and by that means to arrive in the colder latitude of the Chesapeake at the commencement of the vernal season. They availed themselves of this advantage, by planting Indian corn at the proper time of the year, in the grounds bordering on the town, which had been already cleared by the Indians. Their crops proved so luxuriant, that in the next year, or in the year after, it is said they exported a considerable quantity of Indian corn to New England, to purchase salt fish and other provisions.†

Interrupted by Clayborne and his party.

From concurrent circumstances, and indeed from the assertions of historians, we are induced to suppose, that among the first causes which tended to disturb this harmony between the English and natives, were the improper insinuations circulated among the latter by captain William Clayborne and his party. They most unjustly and falsely endeavoured to create a belief among the Indians, that the Maryland colonists were Spaniards,

* Captain Richard Ingle, who associated with captain Clayborne, seized the records of the province in 1644, and carried them to Virginia. Most of them were lost or embezzled.—See Bacon's preface to his addition of the laws of Maryland.

† Oldmixon's Brit. Emp. in Amer. vol. 1, p. 188;—where it is said, that their exportation of corn to New England, at the time above mentioned, amounted to *ten thousand* bushels, but as that seems to be rather too large a quantity for the grounds, which they could then have cleared, it is here stated with some hesitation.

and enemies of the English in Virginia; probably availing themselves, in proof thereof, of the similitude in their religious ceremonies. Clayborne had, it seems, prior to the arrival of governor Calvert and his colony, settled himself, with some others, on the isle of Kent, which is situated in the Chesapeake, higher up than St. Mary's, and within the lines of the lord Baltimore's charter. This he had done in virtue of his license to traffic with the natives, and thereupon claimed a right to the property of the soil, not only of this island, but of another settlement which he had also fixed at the mouth of the Susquehanna. Lord Baltimore, perhaps informed of these circumstances by his brother, issued orders, in September of this year, (1634,) that if Clayborne would not submit to his government, he should be seized and punished.* He was not, however, taken; but being provoked that the lord Baltimore had obtained a grant, which included these places to which he had been accustomed to trade, and where he had now made some settlements, he sought all the means in his power to defeat the success and prosperity of the colony at St. Mary's. Among these means, was this ungenerous and cruel attempt to set the savages at war upon this infant colony. This ridiculous suggestion was at first believed by the simple natives, and suddenly they withdrew their company from St. Mary's. Our colonists were then employed in erecting comfortable habitations for themselves, in and about the town; but, alarmed at this alteration in the behaviour of the Indians, they ceased from the work on their buildings, and betook themselves to the erection of a fort for their security; which, it is said, they accomplished in about six weeks, and then returned again to their employments in finishing their houses. In a short time, however, the Indians became sensible of this deception, and resorted again, as formerly, to the colony.†

About the commencement of the succeeding year, 1635, (to wit, on the 26th of February, 1634-5, old style,) it appears, that

* The 12th and 18th sections of the charter, seem to have authorized the exercise of martial law in such cases. Chalmers's Annals, ch. ix. p. 210, who cites Virg. Pap. 75 B. p. 125.

† Oldmixon's Brit. Emp. in Amer. vol. 1, p. 188, 189. Mod. Univ. Hist. vol. 40, p. 468. These authorities are corroborated by what is stated by Chalmers, in his Annals, ch. ix. note 21, that "among the Virg. Pap. 75 B. p. 139," (in the plantation office,) "there is an examination of the king of Patuxent relative to Clayborne's intrigues;" from which he states in substance as above.

CHAP. I. a legislative assembly of the province was, for the first time, called and held at St. Mary's. In consequence, most probably, of the loss or destruction of the records, by capt. Ingle, as before mentioned, a very small remnant only of the proceedings of this assembly is left to us. It seems, however, sufficient to establish the fact, that an assembly of the freemen of the province sat at this time; and, as we are assured by a learned annalist of the British American provinces, who had recourse to authentic documents in the English plantation office, it is certain, that "among other wholesome laws," it was then enacted, "that offenders, in all murders and felonies, shall suffer the same pains and forfeitures as for the same crimes in England."* But these acts being dissented to by the lord proprietary; principally, as we have grounds to suppose, on account of his claiming a right, by the charter, of propounding or *initiating* all laws to be enacted by the provincial legislature, the above mentioned act, for the punishment of capital crimes, did not become a law, and the want of it seems to have thrown the subsequent house of assembly, 1637-8, into some confusion, as will be seen in its place.

Clayborne
resorts to
open mili-
tary force.

Clayborne, however, was not content with his secret mode of annoying the colony. He resorted to open military force in his opposition to lord Baltimore's government. Early in the year 1635, he granted his special warrant or commission under his hand, to a certain Ratcliffe Warren, then commonly known as lieutenant Warren, to seize and capture any of the pinnaces or other vessels belonging to the government or colonists of St. Mary's; and in pursuance thereof an armed pinnace or boat belonging to Clayborne, was fitted out for that purpose, manned with about fourteen men, among whom was a certain Thomas Smith, "gentleman," who appears to have been second in command, next to Warren, on this expedition. The government at St. Mary's, probably apprised of these measures of Clayborne, immediately equipped also two armed pinnaces or boats, which sailed under the command of Thomas Cornwallis, esqr., one of the assistants or commissioners before mentioned. These two

* See Chalmers's Annals, ch. ix. p. 210 and 232, note 20; where he states that "among the Virg. Pap. [75 B. p. 126,] there is a copy of the act of attainder of Clayborne, the *title* only of which Mr. Bacon had seen, which recites the proceedings of an assembly held at St. Mary's the 26th of February, 1634-5."—In the list of "bills" agreed to at the assembly of 1637-8, published in Bacon's Collections of the Laws of Maryland, is "A bill for the attainder of William Clayborne;" but no copy of that or any other of the bills of that session, are now to be found on the records of the State.

armaments met, it seems, some time in April or May of this year, 1635; in either the Pocomoke or Wighcomoco rivers on the eastern shore of the province,* where a battle commenced between them, by Clayborne's men firing first on Cornwallis's boats, as alleged in the proceedings of the assembly in this case.† Cornwallis immediately returned the fire; and the result was, that lieutenant Warren and two of his men were killed, and one of Cornwallis's men. Clayborne's boat and men, it would seem, were taken; and as Thomas Smith, "gentleman," was probably the next in command, or principal person, after the death of Warren, he was afterwards tried for the offence by the assembly, as will presently be further noticed. Clayborne before this had fled for refuge to Virginia, and commissioners were sent by the governor of Maryland to the governor of Virginia, (Harvey,) to reclaim him as a criminal against the laws of Maryland; but Harvey thought it proper to send Clayborne, with the witnesses to England.‡

In this situation of constant danger from the savages, and actual warfare with their own countrymen, it could not be expected that the colonists had as yet, in a little more than a year from their first landing, extended their settlements beyond their small town at St. Mary's. The lord proprietor, however, had not forgotten to make arrangements for a more dispersed occupation of the country. There is strong evidence to presume, that written propositions or "conditions," upon which the colonists were to emigrate, had been propounded to them before their departure from England; but, as these are not now to be found

The lord proprietor's instructions relative to grants of lands. 1636.

* There were two indictments found before a county court held at St. Mary's on the 12th of February, 1637, (old style,) upon which Thomas Smith, and others of Clayborne's men, appear to have been arraigned and tried by the assembly. In one of which indictments the offence is stated to have been committed, "in the river Pocomoque, on the eastern shore, on the 23d of April, in the year 1635." In the other indictment, the offence is laid or stated to have been committed "in the harbour of great Wiggomoco, in the bay of Chesapeake, on the 10th day of May, in the year of our Lord 1635." Whether there were two distinct engagements between the two parties does not appear certain. The murder of William Ashmore, one of Cornwallis's men, seems to be the gist of the offence in both indictments. From which it might be inferred, that there was only one battle; and Clayborne, in his subsequent petition to his majesty, mentions but one engagement.

† It is proper to mention here, that Clayborne, in his petition, alleged that Cornwallis and his men fired first on his boat; and that they had taken his pinnaces and boats, and still detained them.—See his petition hereafter stated.

‡ Burk's Hist. of Virg. vol. 2, p. 41.—As an appendix to the preceding events of 1633, see note (V.) at the end of this volume.

CHAP. I. among the records of the province, it is probable, that the instrument of writing, containing them, was either among those lost or embezzled by Ingle or Clayborne, as before mentioned, or it was never placed on any record on this side of the Atlantic. Be that as it may, his lordship, in the year 1636, considered it proper to send to his brother, the governor, or as he is therein styled, —“his lieutenant-general of the province of Maryland,”—“instructions, relative to grants of land, to be made to the several colonists or “adventurers” as they are therein termed, “for the planting of his province of Maryland.” As this instrument of writing* contains the outlines of his lordship’s plan for parcelling out the lands of this province, in pursuance of his charter, and therein developes the mode of colonization subsequently pursued by him, it will be proper here to exhibit a copy of it to the reader.

“To our dear brother Leonard Calvert, esqr., and our lieutenant-general of the province of Maryland, or to any other our lieutenant-general there for the time being.

“Whereas the adventurers to plant that our province of Maryland have made suit unto us, that we would be pleased to grant unto them under our great seal of our said province such proportions and quantities of land there upon such considerations and agreements *as we have heretofore propounded and promised* to grant the same unto all such adventurers;† forasmuch as we are bound in honour really to perform the same in all points, these are, therefore, to will and authorize you, that presently upon receipt hereof you make or cause to be made under our great seal of that our said province unto every first adventurer for every five men aged between sixteen and fifty years, which such adventurer did bring into our said province to inhabitt and plant there in the year of our Lord 1633, and unto his heirs for ever, a grant of two thousand acres of land of English measure, for the yearly rent of 400*lb.* of good wheat, and to every adventurer which in that year did bring a less number than five men into that our said province of the ages aforesaid to inhabitt and plant

How lands were to be granted to the first adventurers in 1633.

* It is by some called “conditions of plantation;” and similar documents, to be found among the records, issued from time to time, have been generally so denominated; but “instructions”—is the appellation given them on this occasion in the provincial records; see “Council proceedings from 1636 to 1657,” p. 1.

† This seems to raise a strong presumption, that “conditions of plantation” or terms of emigration, either oral or written, most probably the latter, had been “propounded” by the lord proprietor to the adventurers in 1633, before their embarkation, when the first colonists left England.

there and unto his heirs for ever a grant of one hundred acres of land of like measure for himself, and one hundred acres more for his wife, (if he brought any,) and for and in respect to every servant, and fifty acres for every child under the age of sixteen years, for the rent of 10*lb.* of wheat yearly for every fifty acres. CHAP. I.
1636.

“And to every other adventurer which hath adventured to transport men into our said province of the age aforesaid in the years of our Lord 1634 and 1635, for every ten men which such adventurer did bring into our said province in either of the said years, and to his heirs for ever a grant of two thousand acres of land of the like measure for the yearly rent of 600*lb.* weight of good wheat, and to every other adventurer which in either of the said years did bring a less number than ten men as aforesaid, and to his heirs forever, a grant of one hundred acres of land (of like measure) for himself, and one hundred acres for his wife, (if he brought any,) and for and in respect of every such servant one hundred acres, and for every child under the age of sixteen years fifty acres, for the yearly rent of 70*lb.* weight of wheat for every fifty acres. How to the
adventur-
ers of 1634
and 1635.

“And to every other adventurer which hath adventured to plant and transport any men into our said province, since the year of our Lord 1635, or which at any time hereafter shall transport any men of the age aforesaid, to inhabit and plant there until some other or further *conditions of plantation* shall by us be propounded and published to adventurers, and an authentic copy of such conditions by us signed and transmitted into our said province for every five men which he or they shall so transport thither, and to his or her heirs for ever, a grant of one thousand acres of English measure for the yearly rent of twenty shillings to be paid in the commodities of the country, for every such thousand acres, and to every other adventurer which within the time next aforementioned, hath or shall transport any number of persons less than five a grant of one hundred acres of land for him or herself, and one hundred more for and in respect of his wife, (if he brought any,) and as much for and in respect of every man servant, and fifty acres more for and in respect of every child under the age of sixteen years, and for in respect of every maid under the age of fourty years which he or she hath or shall so transport thither, and to his or her heires for ever, for the yearly rent of twelve pence for every fifty acres. How to all
others after
the year
1635.

“And we do further will and authorize you, that every two

CHAP. I. thousand acres, and every three thousand acres, and every one
 1636. thousand acres of land so to be passed or granted as aforesaid
 Manors of unto any adventurer or adventurers, be erected, and created into
 1, 2, and a manor to be called by such name as the adventurer or adven-
 3,000 acres turers shall desire.
 to be erect- ed.

Courts-
 Leet and
 Courts-
 Baron.

“And we do hereby further authorize you, that you cause to be granted unto every of the said adventurers within every of their said manors respectively, and to his or their heirs a court-baron and court-leet, to be from time to time held within every such manor respectively. And to the end you may the better be informed in what manner to pass every such grant, court and courts as aforesaid, according to our intention, We have sent unto you under our hand and seal a draught of a grant of a manor court-leet and court-baron, and a grant of a freehold, which precedents you are to follow, changing only the adventurers’ names, the rents and conditions of plantation as the case shall require; for doing whereof this shall be your sufficient warrant. So we bid you heartily farewell. Given at Portsmouth, the eighth of August, 1636. Signed C. BALTIMORE.”*

It will readily be perceived, that these instructions, or conditions of plantation, were well calculated to induce men of some property in England, who were able to bear the expense of transporting servants and dependents, to emigrate to this province. It is true, that it was sketching out aristocratic features in the future government of the province, which in other times, might have been supposed to operate in discouragement of emigration. But, it is to be remembered, that the colonists, for whom Maryland was formed as an asylum, being Catholic refugees, were accustomed to arrange themselves, according to the then politics of England, on the side of the supporters of the monarchy and aristocracy of the realm. This feudal mode of parcelling out lands by subinfeudation was not, therefore, so horrible to them, as may appear to us at this day.† “The age of chivalry” had not then quite past; and some faint remains of the reciprocal connexion between a lord and his vassals might still be discern-

* See the Provincial Records, entitled “Council Proceedings from 1636 to 1659,” p. 1.

† The feudal tenures then subsisted nearly in the same state as they are described in lord Coke’s Institutes, which were written and published but a few years prior to lord Baltimore’s charter of Maryland. The reader recollects, that the feudal tenures were not completely abolished, until within a few years after the restoration of Charles II. in 1660.

ed in the structure of society, sufficient to induce the dependents of a chief to brave with him the dangers of the ocean, the wilderness, and the savage. CHAP. I.
1636.

One circumstance, however, discernible in this plan of colonization, must attract approbation. The grants to the adventurers were to be, of an *indefeasible estate of inheritance in fee simple to them and their heirs for ever*. Security, in the absolute enjoyment of property, is the best corner-stone that can be laid in the foundation, which is to support the fabric of a free government. An humble feudal tenant, enfossed round with this rampart, might well consider his cottage as his castle; and might smile with regret at the delusion of even the well-meaning citizen, who delights in the uncertainty of revolutionary liberty.

In pursuance of these instructions, and correspondent also, with the charter, manors of lands were, in process of time, laid off in different parts of the province; and some of them appropriated or *reserved* for the lord proprietor's own particular use; others again were erected by the special orders of the lord proprietor, for the benefit of his relations or particular friends, with special conditions and privileges; and others also so denominated and granted to individuals, according to the terms of those instructions or conditions of plantation, as they so became entitled, for the transportation of colonists or settlers into the province. But, although the power and right of holding courts-baron and courts-leet, might have been inserted in some, or all of those grants of manors, yet we are told, from good authority, that no memorial appears on the records of the province, of any practical use of either of those kinds of courts.*

* So stated in Kilty's Landholder's Assistant, p. 93.—But I find in the "Council Proceedings from 1636 to 1657," p. 23, a commission there recorded, for holding a court-leet in the isle of Kent, directed "to Robert Philpot, William Cox, Thomas Allen, of the isle of Kent, gentlemen, to be justices of the peace within the said island, to hold a court-leet in all civil actions not exceeding 1200 lbs. tobacco; and to hear and determine *all offences criminal*, within the said island, which may be determined by any justice of the peace in England, not extending to the loss of life or member. Given at St. Mary's, February 9th, 1637. Witness, Leonard Calvert."—As proceedings, most probably, took place under this commission, there must, of consequence, have been some written memorials of those proceedings once existing, though probably now lost. As the business of courts-leet in England has long ago been gradually absorbed by the courts of quarter-sessions for the shire or county, so with us, it is probable, that if any courts-leet or courts-baron were ever held in the province, the county-courts, at a very early period, swallowed up their jurisdictions. To trace these transfers of judicial power, would at this day be unnecessary, if it was a possible task, except it be to throw some light upon the history of those times.

CHAP. I. As it would not have been safe, at this period of time, to have
 1636. commenced a scattered population of the country, it was very
 Grants of properly directed by his lordship, soon after the foregoing in-
 small lots structions, by letter, to his brother and lieutenant general, that
 in the town of St. Ma- he should "pass in freehold, to every of the first adventurers that
 ry's. shall claim or desire it, and to their heirs, ten acres of land with-
 in the plots assigned or to be assigned for the town and fields of
 St. Mary's, for every person that any of the said adventurers
 transported or brought into Maryland, according to their condi-
 tions first published, and five acres of land to every other ad-
 venturer for every other person which he hath or shall transport
 thither since that time of the first plantation until the thirteenth
 day of August which shall be in the year of our Lord 1638.—
 And for so doing this shall be your warrant. Given under my
 hand and seal at Warden Castle in the realm of England, the
 29th of August, 1636."*

The nature of the first form of government of the colony. Although king Charles the first had, but a few years before he
 granted the charter of Maryland to lord Baltimore, dissolved his
 parliament, and had at that time formed the resolution, as some
 historians allege, of never calling another, and of governing
 without them, yet we find very strong provision made in that
 instrument of grant, for that important ingredient of a free go-
 vernment—a representative legislature. In the seventh section
 of that charter, the king "grants unto the said baron and to his
 heirs, *for the good and happy government of the said provinces,*
 free, full, and absolute power, to ordain, make, and enact laws,
 of what kind soever, according to their sound discretions, whe-
 ther relating to the public state of the said province, or the pri-
 vate utility of individuals, *of and with the advice, assent, and*
approbation of the freemen of the same province, or of the great-
 er part of them, *or of their delegates or deputies, whom we will,*
shall be called together for the framing of laws, when, and as
often as need shall require, by the aforesaid baron of Baltimore,
 and his heirs, and in the form which shall seem best to him or
 them, and the same to publish and duly to execute."

But in the eighth, or next section immediately following, a
 clause is inserted, which, by a latitude of construction, might
 possibly be interpreted to give powers repugnant to the mode of
 legislation prescribed or granted in the former. A reason for
 the clause is first given by way of preamble:—"and forasmuch

* Land Office Record Book, No. 1, folio 30.

as in the government of so great a province sudden accidents may frequently happen, to which it will be necessary to apply a remedy before the freeholders of the said province, their delegates, or deputies, can be called together, for the framing of laws; neither will it be fit, that so great a number of people should immediately on such emergent occasion, be called together; we therefore, for the better government of so great a province, do will and ordain, and by these presents, for us, our heirs and successors, do grant, unto the said now baron of Baltimore, and to his heirs, that he and they, by themselves or by their magistrates and officers, &c. *may and can make and constitute fit and wholesome ordinances*, from time to time, to be kept and observed within the province aforesaid, as well for the conservation of the peace, as for the better government of the people inhabiting therein, and publicly to notify the same to all persons whom the same in any wise do, or may affect. Which ordinances, we will to be inviolably observed within the said province, under the pains to be expressed in the same, *so that the said ordinances be consonant to reason, and be not repugnant nor contrary, but (so far as conveniently may be done) agreeable to the laws, statutes, or rights of our kingdom of England:* and so that the same ordinances do not, in any sort, extend to oblige, bind, charge, or take away the right or interest of any person or persons, of, or in member, life, freehold, goods or chattels."

CHAP. I.
1636.

This was entirely consonant to those unfortunate maxims, which Charles had adopted about this time, for the rules of his regal conduct. The indefensible principle, that his orders in council, and proclamations thereupon, should be deemed the legal and constitutional substitutes of laws, which ought to have been enacted by the three estates of the realm in parliament assembled, was the prominent rock on which his subsequent fortunes split. But it must be acknowledged, that qualified as this principle is, by the limitations at the end of the clause in this eighth section of the charter, it is difficult to conceive wherein a case could occur, in which an ordinance of the lord proprietor or his governor could possibly be made, so as not "to oblige, bind, charge, or take away the right or interest of some person or persons, of or in member, life, freehold, goods or chattels."

This leads us, however, to the notice of an instrument of writing, called in the body of it, "an ordinance," made by the lord Baltimore in England, in the early part of the year 1637, An ordinance for that purpose.

CHAP. I. (bearing date the 15th of April, 1637,) containing instructions to his brother Leonard Calvert, esq. for the regulation, government, and settlement of the province. But, as he therein constitutes and appoints him to fill several offices in the province, it would seem more properly to fall under the denomination of a *commission*;^{*} of which, the most remarkable part seems to be that which relates to the calling an assembly, to meet on the twenty-fifth day of January next ensuing, after the date of the said ordinance; for the purpose of signifying to them his lordship's *disassent* to some laws, which had been before that time enacted by them. These laws, thus to be rejected by him, were, most probably, those made at the assembly before mentioned, held on the 26th of February, 1634-5.† What these laws were, or what were his lordship's reasons for refusing his assent to them, we are not informed. It would seem at first, as if his lordship meant to contend for such a construction of the seventh section of the charter, as if it exclusively invested in him the right and power of first propounding the laws to the assembly, "for their advice, assent, and approbation," and that the assembly had no right or privilege of originating or framing laws. This subject, however, will be further explained, when we come to notice the proceedings of the assembly, which was directed to be called on the twenty-fifth of January.

Proclamation in England against emigration.

In the mean time, it will be necessary to mention some intervening incidents of the present year; among which a proclamation issued by king Charles, bearing date "the last day of April, 1637, against the disorderly transporting his majesty's subjects to the plantations within the parts of America," seems to claim some notice. By this proclamation, the officers of the several ports in England, Wales, and Berwick, were commanded not to permit any persons, being subsidy men, or of the value of subsidy men,‡ to embark for any of the plantations, *without leave*, from his majesty's commissioners for plantations,§ first had and obtained, nor any persons under the degree or value of subsidy

* See this commission at large in Note (VI.) at the end of this volume.

† The commission of April 15, 1637, (just referred to) expresses his lordship's "disassent to *all the laws* by them heretofore or at any time made;" which would have included the laws of any intermediate session, as in 1636, if any assembly had been held in the beginning of that year; but no vestige of any preceding session, except that of February 26th, 1634-5, appears.

‡ That is, men who were liable to pay the tax called a subsidy.

§ These seem to be commissioners mentioned in a "special commission to the lord archbishop of Canterbury and others," issued by the king some time in the

men, without an attestation or certificate from two justices of the peace, living next the place where the party lately then before dwelt, *that he hath taken the oaths of supremacy and allegiance,* and like testimony from the minister of his conversation and *conformity to the orders and discipline of the Church of England;* and that such officers should return to his majesty's said commissioners of plantations every half year a list of the names and qualities of all such persons, as shall from time to time be embarked in any of the said ports for any of the said plantations.* Although it is evident that this proclamation would affect the emigration of English Catholics to Maryland, if put in execution against them, yet it would seem, from the preamble to it, to have been principally intended to check the emigration of the puritans to New England, referring to the transportation of "many idle and refractory humours, whose only or principal end is to live as much as they can without the reach of authority." The Catholics were generally considered, by the court-party of that day, as peaceable and good subjects, but the Puritans were viewed in a very different light. Hence it is probable, that it never was enforced against the Catholics, or that they at all times could easily obtain a license to depart. But the civil wars now approaching, soon rendered it ineffectual even as to the Puritans.

It would appear also, that towards the latter end of this year the isle of Kent had been in some measure reduced to the obedience of the lord Baltimore. Clayborne had failed in his attempts to retain his possession of it by force, and had, as before observed, been sent by the governor of Virginia to England, to seek what remedy he might have there. Measures seem, therefore, now to have been taken to put in force the civil authority of the lord proprietor over that island, as a part of the province. Accordingly a commission was granted by governor Calvert to captain George Evelyn, of the following tenor,—“Leonard Calvert, governor of Maryland, to my good friend captain George Evelyn, of the isle commonly called Kent, within this province,

The isle of Kent reduced to lord Baltimore's government.

year 1634, vesting in them powers of government over all the English colonies already planted or to be planted, not only in political, but in ecclesiastical matters. It seems to have been styled, in common parlance, 'The Board of Lords Commissioners for Foreign Plantations. See it in the original Latin, in Hazard's Collections, vol. 1, p. 345, and in English in Hutchinson's Hist. of Massachusetts, vol. 1, appendix, No. IV.; but these two copies vary in the names of one or two of the commissioners, and somewhat also in the date of it.

* See the proclamation more at large in Hazard's Collections, vol. 1, p. 421.

CHAP. I. greeting: Whereas I am willing to provide for the good govern-
 1637. ment of the said isle of Kent, being of right a member of this province, therefore reposing especial confidence in the trust, wisdom, and well approved experience of you the said George Evelyn, I do, by these presents, authorise, constitute, and appoint you to be commander* of the said island and the inhabitants thereof, giving and granting hereby unto you full power and authority to elect and choose any six or more able and sufficient men, inhabitants of the said island, as you in your discretion shall think fit, with whom you shall advise and consult in all matters of importance, and to call a court or courts, as often as there shall be cause, and in the said courts to award all manner of process, hold pleas, and to hear and finally to determine all causes and actions whatsoever civil, happening and arising between any the inhabitants of the said island, not exceeding in damages or demands the value of ten pounds sterling; as also to hear and finally determine all matters and offences whatsoever criminal, happening and committed within the said island, which may be heard and determined by any justice of peace in England in their court of sessions, not extending to life or member; and I do further authorise you to do, use, and execute all and all manner of jurisdiction and authority whatsoever for the conservation of the peace within the said island, as any justice of peace in England may or ought to do by virtue of his commission for the peace, and further to elect and appoint all necessary officers for the execution of justice and conservation of the peace there, with allowance of such fees as are usually belonging to the same or the like offices in Virginia; and to do all other things and acts which shall be necessary for the execution of the power and jurisdiction hereby committed unto you. Given at St. Mary's, this 30th day of December, Anno Dom. 1637."†

* The civil government of Maryland was in many instances copied from similar institutions which had been in practice and use in the elder colony of Virginia. It appears, that previous to the division of that province into counties, settlements, distant from James town, were erected into "corporations," as they were called, and officers appointed to preside over each "corporation" under the denomination of a "commander." See one of the laws, (or *articles* as they are called,) passed at the session of assembly in Virginia, held in 1624; stated in Burk's Hist. of Virg. vol. 1, p. 282.

† "Council proceedings from 1636 to 1657," p. 20. It may be here observed, that Evelyn must have been a man of some note in the province, as it appears from the land records thereof, that he was the owner at this time of "the manor of Evelinton in the baronie of St. Mary's." A manor could not be less than one thousand acres, according to his lordship's instructions of 1636, before mention-

The colonists, it seems, had now begun to extend their settlements beyond the limits of the town of St. Mary's. In a commission to Robert Vaughan, of St. George's Hundred, bearing date the 5th day of January, 1637, (1638, new style,) appointing him constable of the said hundred,* there is the following preamble to it,—“Whereas the west side of St. George's river is now planted by several inhabitants, and is thought fit to be erected into a hundred, by the name of St. George's Hundred,” &c. The commission then specifies his powers as the constable of that hundred, nearly in the same manner as the like commission in England, prescribing their common-law duties; but moreover particularly enjoins him, to make diligent search and inquiry, for persons who furnish the Indians or savages with arms and ammunition.† To this same purpose, and for the illustration of other matters, a commission to Robert Wintour, esq., bearing date but a few months afterwards, may be here stated.—“Cecilius to our beloved *Counciller* Robert Wintour, esq. &c.‡ Whereas the west side of St. George's river is now planted by several inhabitants, and is thought fit to be erected into a hundred by the name of St. George's Hundred, We willing to provide for the better conservation of the peace within the said hundred, &c., do constitute, &c. you to be a justice of our peace within the said hundred, &c. with such powers as belong to a justice of the peace in England, by virtue of his commission for the peace, and to make diligent inquiry after such as shall sell, or (without license) lend or deliver any gunpowder, or shot to any Indian, or that shall lodge or entertain in his house by night any Indian, without leave from us, &c.; and we authorize you to appoint a high constable for your hundred, to whom so appointed by you, we give all such powers, &c., as belong to a high constable of any hundred in England. Given at St. Mary's this last day of March, 1638.—Leonard Calvert.”§

CHAP. I.
1638.

The colonists begin to extend their settlements into the country.

ed. A “barony” is the Irish term for a hundred, (the civil division of a county,) as will appear hereafter.

* Although the office of constable is now by us, and might be then in England, considered to be an office below the dignity of a gentleman; yet in the then situation of the province, it might with propriety be estimated an office of honour. That Mr. Vaughan was then considered in the rank of a gentleman, we may infer from his subsequent promotions, particularly from his being made *commander* of the isle of Kent county, under governor Stone about the year 1650.

† Council proceedings from 1636 to 1657, p. 29.

‡ It would appear from this, that Mr. Wintour was at this time also a member of the governor's council; but when or how appointed no where appears on record.

§ Council proceedings from 1636 to 1657, p. 21.

CHAP. I. These commissions exhibit very early recognitions of the principle—that the first colonists of Maryland brought with them so much at least of the English common-law, as was applicable to their own situation and condition, and particularly those parts of that law, which were calculated to afford protection from the personal injuries of each other.

The county of St. Mary's organized.

As hundreds were the civil divisions of a county in England, we may infer, that all the parts of the country adjacent to the town of St. Mary's, inhabited by the colonists, were considered as forming a county, to which the name of St. Mary's was given; but whether any real limits were yet assigned and marked out as the boundaries of that county, does not appear. That a county was now so called, appears from a commission to John Lewger, esq. bearing date the 24th of January, 1637, (1638, new style,) appointing him conservator of the peace, *within the county of St. Mary's*, with such powers as are usually exercised and executed by any justice of peace in England, &c.* The same commission appoints him also, "commissioner in causes testamentary," to prove the last wills and testaments of persons deceased, and to grant letters of administration, &c. It is addressed to him in the following style,—“To our trusty councillor John Lewger, secretary of our province of Maryland.”† He had been appointed councillor and secretary by the commission of the 15th of April, 1637, before mentioned; in virtue of which office of *secretary*, it seems to have been the intent of that commission, to make him also, both principal clerk of the council and register of the land office. The same instrument appointed him also, “collector and receiver of all his lordship's rents, revenues, profits, and customs.” It appears from subsequent records of the province, that Mr. Lewger had been sent into the province from England, by the lord proprietor, as a man well qualified to assist his brother in the administration of the government. He arrived there on the 28th of November, 1637, with his wife and a son named John about nine years old, together with three maid servants, three men servants and a boy.‡

Mr. John Lewger.

* Also in the same book page 23, a commission to James Baldrige to be Sheriff and coroner “of St. Mary's county,” dated January 29, 1637.

† Ibid, p. 23.

‡ Taken from the oldest record book in the land office, viz. *Liber*, No. 1, p. 17.—In the same book, p. 19, mention is made of his importing in the same year, (1637,) twelve men and five women, who are not styled therein—servants. These importations of servants as well as others, entitled him to what were called “rights” to land, that is, so many acres for each person imported, as stated and described in the lord proprietor's instructions before mentioned. These

It would seem, therefore, that he was a man above the ordinary rank in society, both as to fortune and mental qualifications. CHAP. I.
1633.

In pursuance of the lord proprietor's instructions, before mentioned, of the 15th of April, 1637, for the holding an assembly, on the 25th of January next, the governor proceeded to some preparatory arrangements necessary thereto. Accordingly, about the first of January, 1637, (1638, new style,) he issued his warrant to captain Evelyn, commander of the isle of Kent, of the following tenor.—“Whereas my dear brother, the lord proprietor of this province, hath, by his commission to me directed, in that behalf, bearing date at London, in the realm of England, the 15th day of April, 1637, appointed a general assembly of all the freemen of this province, to be held at his town of St. Mary's, on the 25th of January next; these are therefore, in his lordship's name, to will and require you, all excuses set apart, to make your personal repair to the fort of St. Mary's, on the said 25th day of January, then and there to consult and advise of the affairs of this province; and further, to will and require you at some convenient time, when you shall think fit, within six days after the receipt hereof at the farthest, to assemble all the freemen inhabiting within any part of your jurisdiction, and then and there to publish and proclaim the said general assembly, and to endeavour to persuade such and so many of the said freemen as you shall think fit, to repair personally to the said assembly, at the time and place prefixed, and to give free power and liberty to all the rest of the said freemen, either to be present at the said assembly, if they so please, or otherwise to elect and nominate such and so many persons, as they or the major part of them, so assembled, shall agree upon, to be the deputies or burgesses for the said freemen, in their name and stead, to advise and consult of such things as shall be brought into deliberation in the said assembly; and to enter all the several votes and suffrages upon record, and the record thereof, and whatsoever you shall do in any of the premises, to bring along with you, and exhibit it at the day and place prefixed, to the secretary of the province for the time being; and for so doing, this shall be your warrant.”*

particulars, relative to Mr. Lewger, exhibit the early mode of colonising the province.

* See “Assembly Proceedings from 1637 to 1658,” p. 1.—In this part of this history, heretofore published, the author had here subjoined a note, in which he thought himself warranted, from legal authorities as well as from the obvious

CHAP. I. It is not easy to determine, whether the isle of Kent was at
 1638. this time considered as a county by itself, or a distinct territorial government, within the lord Baltimore's jurisdiction, subordinate to the general government of the province. From the circumstance of captain Evelyn's having a council assigned him of six persons, as mentioned in his commission, before stated, of the 30th of December, 1637, it would seem to be of the latter.* However that was, yet it seems, that at this time any *freeman* thereof had liberty to repair in person to the assembly, and to be considered as a member thereof. Although the alternative was given to them, by the foregoing warrant, of meeting together and electing representatives to serve in the assembly, as at this day,† yet it would appear from the proceedings of this assembly, that the practical construction of the foregoing warrant was, that every freeman, who did not chose to attend himself, might depute some one, who did attend as a member, to vote for him as his *proxy*, in the manner of the house of lords in England.‡

construction of the seventh and eighth sections of the charter of Maryland, to advance an opinion, that the word—"Freemen," so often used in the early legislative proceedings of the province, as well as in the charter, was therein meant as being synonymous to the word—*freeholder*. He has since, however, met with a case, which occurred in the proceedings of an assembly of the province held in September, 1642, in which the question seems to have been otherwise decided by the assembly. It is thus stated on the journal.—"Mr. Thomas Weston being called, pleaded he was no *freeman*, because *he had no land nor certain dwelling house, here, &c.*; but, being put to the question, it was voted, that *he was a freeman*, and as such bound to his appearance by himself or proxy; whereupon he took place in the house."—(This legislative proceeding will be further noticed in its proper place.) A passage in *Beverly's Hist. of Virg. p. 233*, (published in 1722,) seems also to indicate a different construction, especially as the usages of Virginia were much adopted by her younger sister colony.—"Every *freeman*," says he, (by which denomination they call *all but indentured or bought servants*,) from sixteen to sixty years of age, is listed in the militia."—Yet the same historian, in the same work, (p. 206,) where he treats of the election of burgesses, states that,—"*the freeholders* are the only electors;" as they are well known to be even to this day. The subject, therefore, seems to be involved in some doubt and obscurity, and the reader is to exercise his own judgment.

* But, by one of the bills of this session of 1638–9, (No. 13, Bacon's Laws,) it was to be erected into a hundred, and called Kent-Hundred, which hundred was to be considered as being *within the county of St. Mary's*, until another county should be erected on the eastern shore.

† This alternative seems to be authorised also by the seventh section of the charter of Maryland.

‡ The principle upon which the right of making a proxy prevails in the house of lords and not in the house of commons is said to be, that the lords are supposed to sit in parliament in their own personal rights, and not as delegates or

The assembly accordingly met on the 25th day of January, CHAP. I.
 1637, (1638, new style.) The lieutenant general, (or govern- 1638.
 or,) appears to have taken the chair as speaker thereof, and the The se-
 three gentlemen who composed his council, to wit, Jerome Haw- cond as-
 ley, Thomas Cornwaleys, and John Lewger, esqrs. set with the sembly of
 others as individual members only, and not as constituting an the pro-
 upper house, as the council afterwards did, but in the manner vince
 in which it is said the parliament in Scotland usually sat prior meet.
 to the union, lords and commons in one room or chamber.* The
 commander of the isle of Kent, (Evelyn,) also took his seat as
 a member. In the list of the members some of whom are styl-
 ed gentlemen and some planters, the *hundreds* from which they
 came, are annexed to their respective names. It would appear,
 that some of the members sat as burgesses or representatives
 from hundreds; others claimed and held seats in their own per-
 sonal rights as freemen, and so far constituting, what is by some
 required to constitute, a true and real democracy, or an assem-
 blage of all the free citizens of the State to make laws for them-
 selves. It is true, that all the freemen of the province did not
 on this occasion attend; but it appears, that such as did not at-
 tend, either voted for some person in his hundred as a burgess
 or representative thereof, or authorized some member, as his
 proxy, to vote for him.† Although *writs of summons*, it seems,

deputies of others, as the commons do. And therefore, as a commoner in parliament was only a proxy or representative of another, he could not constitute a proxy in his place, according to an ancient maxim of law, *delegata potestas non potest delegari*, 4 *Inst.* 12, 1 *Bac. Abr.* 582.—So allowing every freeman in Maryland to have a seat in the assembly, sitting there in his own personal right, he might make a proxy upon the same principle as a lord in England.

* Hume's Hist. ch. LV.—It appears that the parliaments of England, in the time of Edward the first, were also composed of one house only, the lords and commons sitting together.—See 2 *Inst.* 267.

† As the customs of Virginia were closely copied by the colonists of Maryland, a reference to the usages of the former colony is sometimes necessary to illustrate those of the latter.—According to *Burk's* statement, (see his Hist. of Virg. vol. 1, p. 203,) which he professes to take from the "Instructions" sent from the Virginia Company in England to Sir F. Wyat, (governor of Virginia, in 1621,) the first representative body, which ever sat in Virginia, (according to *Stith* in the year 1619, but according to *Beverly* in 1620,) consisted of "two burgesses, chosen for every town, hundred, and plantation," (the word *plantation* here must mean a cluster of families seated in separate houses near to each other,) "by the inhabitants, to decide conjointly with the governor and council, by the greatest majority of voices on all matters of concern relating to the colony."—On the subject of this first introduction of a provincial legislature into Virginia, *Chalmers*, (in his Annals, ch. III.) who states it to have been in June, 1619, further remarks:—"The colony had been divided only into seven hun-

CHAP. I. had been issued to every freeman, individually, to attend, yet
 1688. one of the first acts of the proceedings of the assembly, on the first day of their meeting, was to cause proclamation to be made, "that all freemen omitted in the writs of summons, that would claim a voice in the general assembly, should come and make their claim."

"Whereupon claim was made by John Robinson, carpenter, and was admitted."

A list was made of such freemen as were absent, and of the names of those members who attended and were *proxies* for such absentees; among which members, the three gentlemen who were councillors appear to have had the greatest number of delegations.*

The house then proceeded to establish rules and orders to be observed during their session; the substance of which was as follows :

"Imprimis—The lieutenant general, as president of the assembly, shall appoint and direct all things that concern form and decency, to be observed in the same; and shall command the observance thereof, as he shall see cause, upon pain of imprisonment or fine, as the house shall adjudge.

"Item—Every one that is to speak to any matter shall stand up, and be uncovered, and direct his speech to the lieutenant general, as president of the assembly; and if two or more stand up to speak together, the lieutenant general shall appoint which shall speak.

"Item—No man shall stand up to speak to any matter, until

dreds or distinct settlements, which seem to have enjoyed some of the privileges of boroughs : and from this circumstance the democratic branch of the assembly has been called, to this day, the house of burgesses, though composed almost entirely of the representatives, of counties. To these Yeardley, the governor, in pursuance of his instructions from the company, issued writs for the election of delegates. The assembly, formed of the governor, the council, the deputies, then met together, in one apartment, and transacted affairs like the parliament of Scotland of old, which mode continued unchanged till a period subsequent to the restoration. The laws, which were then enacted, and which do not now exist, were transmitted to England for the approbation of the treasurer and company, without whose confirmation they were of no validity."

* The journal does not specify how such delegated authority to a *proxy* should be verified, but we may suppose it to have been by the production to the house of some written instrument, in the nature of a warrant of attorney. Although it is said, (Cunningh. Law Dict. verb. *proxy*,) that a peer of the realm must enter his proxy in *person*, on the journal of the house of lords; yet from the case that occurred in 1 *Eliz.* (as stated by lord Coke, 4 *Inst.* 12,) it might be done by an instrument of writing for that purpose.

the party that spoke last before, have sat down; nor shall any one speak above once to one bill or matter at one reading, nor shall refute the speech of any other with any reviling or contentious terms, nor shall name him but by some circumlocution; and if any one offend to the contrary, the lieutenant general shall command him to silence. CHAP. 1.
1638.

“Item—The house shall sit every day at eight o’clock in the morning and at two o’clock in the afternoon.*

“Item—The freemen assembled at any time, to any number above ten persons, at the hours aforesaid, or within one hour after, shall be a house to all purposes.

“Item—Every one, propounding any matter to the house, shall digest it at first into writing, and deliver it to the secretary,† to be read unto the house.

“And it was ordered by the house, that these orders should be set up in some public place of the house, to the end all might take notice of them.”

The house met again on the next day, the 26th of January, at eight o’clock, according to regulation. Several persons came in, and “claimed their voices as freemen;” of which the following entries on the journal of the house appear to be the most remarkable :

“Then came Edward Bateman, of St. Mary’s hundred, ship carpenter, and claimed a voice as freeman, and made Mr. John Lewger, secretary, his proxy.”‡

Also, “came John Langford, of the isle of Kent, gentleman, high constable of the said island, who had given a voice in the choice of Robert Philpot, gentleman, to be one of the burgesses for the freemen of that island, and desired to revoke his voice, and to be personally put in the assembly, and was admitted.”

The house then proceeded to the most important business of their session, the consideration of the laws transmitted to the colony by the lord proprietor. The draughts of the twelve first The assembly take into consideration

* According to lord Clarendon, (Hist. of the Rebellion, folio edit. p. 44,) the parliament hours about this period of time were, “for the house to meet always at eight o’clock, and rise at twelve, that the committees, upon whom the greatest burden of the business lay, might have the afternoons, for their preparation and dispatch.”

† From this we may infer, that the secretary of the province, Mr. Lewger, acted as clerk of this assembly, notwithstanding he was a councillor, and held moreover several other offices, and besides voted as a member of the house.

‡ This seems consonant to the practice of the house of lords in England, where a proxy must be made in the house *in person*, as before mentioned.

CHAP. I. acts of them being read, they "were severally debated by the
 1638. house." An adjournment then took place until three o'clock in
 tion the the afternoon; but nothing further of importance appears on the
 laws sent journal, to have been transacted on that day.
 in by the proprietor.

On the meeting of the house on the third day of their session, (the 29th of January,) an extraordinary question seems to have been agitated. It thus appears on the journal: "Upon occasion of some *warrants* granted out against some freemen that had made proxies, a question was moved in the house, whether freemen having made proxies during the assembly might be arrested before the assembly were dissolved; and captain Cornwaleys and James Baldridge were of opinion that they might, but the rest of the house generally concurred, that after the writs issued for summoning the assembly, no man having right to repair unto the assembly might be arrested until a convenient space of time after the dissolution of the said assembly, for their repair home."

There is considerable difficulty in ascertaining correctly the true import of the word "*warrants*"—used in the preceding paragraph. In its original, technical, and legal sense, at the period of the common law of England when it was used as above, it was confined to *criminal* cases only. Justices of peace in England, whose precept only was termed a *warrant*, had not, at that time, jurisdiction in any *civil* case, even in the recovery of *small debts*, which were then recoverable only, when under forty shillings, in the ancient county and hundred courts, or courts-baron.* It appears also, from the before mentioned commission to capt. Evelyn,† that he, being made *commander* of the isle of Kent, was, together with his council, to call a court or courts on the isle of Kent, "and in the said courts to hold pleas in *civil* cases not exceeding £10 sterling;" which seems to imply, that justices of peace had in the said island no jurisdiction in the recovery of debts, and *warrants* therefore were not the proper process in such cases. In like manner, we may suppose, the county court of St. Mary's, which was at this time held before the governor himself, (occasionally calling his council to his aid, as it would appear, in virtue of the lord Baltimore's commission before mentioned of 1637, was, "to hear and determine all *civil* causes," whatever their amount might be. If such was then the mode of recovering *small debts* throughout the province, these several courts, thus held before the governor and commander re-

* 3 Bl. Com. 33, 82.

† Ante, p. 43.

spectively, most probably proceeded by common law process in CHAP. I.
1638.
civil cases, to wit, by the writ or precept to the sheriff called a *capias*. From this it might be inferred, that the arrests by *warrant*, alluded to in the journal, must have been in virtue of *criminal* process issued by some person acting as a justice of the peace. But, in answer to this, it is to be observed, that, even at this time in England, no privilege of parliament was allowed to exempt even peers of the realm, and certainly not members of the house of commons, from arrests by *criminal* process or *warrant*, in either treason, felony, or breach of the peace, or where surety of the peace was required.* Perhaps, indeed, privilege might have been claimed at this time in the province against arrests upon warrants for petty misdemeanors, or in cases for the recovery of forfeitures on penal laws, cognizable before a single justice. As no copies of any laws now exist, prior to this present session, nor even of this session, except their titles, this part of our subject must for ever remain in doubt. But the generality of the expressions in the preceding paragraph of the journal, relative to *privilege*, seems to imply, that they spoke of privilege where it was clearly allowable according to parliamentary usage; and therefore most probably intended it in relation to *civil* cases only. The usage of Virginia, the parent colony of Maryland, comes strongly in aid of this construction. Among the first laws now upon record in Virginia, and which were passed at a session of assembly in the year 1624, (it being the third assembly or session ever held in Virginia,) it was enacted,—“That no burgess of the general assembly should be arrested during the sitting of the assembly, and a week before and a week after, upon pain of the creditor’s forfeiting his debt, and such punishment upon the officer as the court should award.”†

* The law of parliament is thus stated by lord Coke, (4 Inst. 25,) who wrote but a few years prior to the emigration of the first Maryland colonists.—“Generally the privilege of parliament holds, unlesse it be three cases, viz: treason, felony and the peace.” The words—“the peace,” were construed by chief justice Pratt, (afterwards lord Camden,) in the remarkable case of *Wilkes*, in the year 1763, to mean cases amounting to a *breach of the peace*, or where surety of the peace might be required. (See 2 Wils. Rep. 159.) But Mr. Justice Blackstone was of opinion, (in his Commentaries, vol. 1, p. 166,) that the *exception* from privilege extended to all *indictable crimes*; and in support of it cites several resolutions of the house of commons, particularly the same case just mentioned of *Wilkes*, with the lords’ protest thereon. (For which see the Ann. Reg. for 1764, p. 172.) However, the *exception* to the general privilege of parliament seems clearly to have prevailed, at the time of the first emigration of our colonists, as far as stated in the text above.

† Burk’s Hist. of Virg. vol. 1, p. 282.

CHAP. I. This declaration of their privilege by the Virginia assembly
1638. clearly alludes to *civil* cases only; and, notwithstanding the inference to be drawn from the jurisdiction of the Maryland courts, as before stated, we must suppose, that either the Maryland justices of peace had cognizance of some cases, where a *warrant* was the proper process, or that the process of the before mentioned courts in *civil* cases was, through some slight error, so termed.

If the privilege, here contended for by our Maryland assembly, was meant to extend to a freeman while he was actually on his way to the assembly, either to take his seat therein, or even to revoke a proxy before made by him, the decision of the house must be allowed to have been proper enough: for, by the law of parliament, the appearance of a peer in the house of lords, cancels any proxy before made by him;* but, if he was to be privileged from arrests even in *civil* cases, while he was about his ordinary business at home, and at the same time represented by his proxy, whom he had appointed, or burgess for whom he had voted, it does not appear to have been consonant to any principle of sound policy.

It seems somewhat remarkable to us at this day, that our ancestors, in such an early state of their colonization, should have had occasion to stickle so much for a privilege, generally esteemed odious even under governments where personal liberty is most strongly cherished. As the habit of contracting debts without the means of payment, is generally supposed to originate from an excess of luxury in living, it is difficult to account for the frequency of arrests for debts, which must be supposed to have existed at this time among the colonists, so as to make their legislative interference a subject of anxiety among them. Just settled in a wilderness, where few temptations to extravagant expenses could exist, we should have supposed that habits of economy would have become almost unavoidable.

The house now proceeded to take into consideration again, the laws sent by the lord proprietor as before mentioned. Three questions on the subject appear to have been proposed in the house: first, whether the laws should be now read again in the house; or, secondly, whether they should be put to the vote immediately, without further reading; or, thirdly, whether they should not be postponed to a future day, when a greater number of members might attend.

* 4 Inst. 13.

“Captain Cornwaleys gave his opinion, that they should expect a more frequent house;” that is, that the business should be postponed until a greater number of members attended. CHAP. I.
1638.

“Captain Fleete* gave his opinion, that they should be read again;” but seemed to coincide with the opinion of captain Cornwaleys, of postponing the subject to a future day.

The previous question, however, was put; whether the laws “should be now put to vote immediately,” or not. It was carried in the affirmative by thirty-three voices to eighteen, both sides including proxies.

“Then were the laws put to the question, whether they should be received as laws, or not.”

“Affirmed by the president and Mr. Lewger, who counted by proxies fourteen voices.”

“Denied by all the rest of the assembly, being thirty-seven voices,” including as we may suppose, their proxies. The laws
sent re-
jected.

Thus it would seem, that governor Calvert and Mr. Lewger, the secretary, were the only two members of the assembly who were for receiving the laws sent in by the lord proprietary; for although they counted twelve other votes besides their own, on the same side, that is, fourteen voices, yet as those freemen for whom they voted as proxies might not have voted in the same way, had they been present, the fourteen voices cannot fairly be counted, in forming an estimate of the real opinions of the freemen of the province. Neither can all the thirty-seven voices in the negative be taken in for the same reason; but, we may suppose, that a much less proportion of those thirty-seven voices were proxies, than on the other side; since by the rules and orders of the house before mentioned, ten members at least were necessary to constitute a house, and in that case there must have been eight members at least in the negative, who voted in their own rights, to two in the affirmative.† The grounds and reasons of their objections to these laws do not appear on the jour-

* It is probable, that this was the same captain Henry Fleete before mentioned, (p. 28,) who was found by governor Calvert, living at Piscataway among the Indians, where he had been for some years before the arrival of the colony.

† The improper effect, of an unlimited right in a member to receive proxies, is here perceptible; and seems to justify an order of the English house of lords, not long before this, (in the year 1626,) that, “for the future no lord should be capable of receiving above two proxies.”—This order was occasioned by an excessive number of proxies obtained in the house at that time by the notorious duke of Buckingham.—See Rapin’s Hist. (Tindal’s edit.) vol. 8, p. 368, and Hume’s Hist. ch. 50.

CHAP. I. nal; but certain it is, that a very warm opposition, among a large
 1638. majority of the freemen, was made to their reception; at the head of which opposition captain Cornwaleys may, from all appearances, be considered as having taken his stand. Neither are we able at this day to judge of the merit or demerit of those laws sent in by the proprietary, by a perusal of them, as no copies of them are to be found on our records.* Did the duty of an historian allow him to mention his conjectures, a plausible supposition might be made, that the dispute about the reception of these laws was dictated more by a political contest for the right of propounding laws to be enacted by the assembly than any other cause. From the good character which Cecilius, lord Baltimore always bore, we cannot suppose that he had framed or proposed any laws for the colonists, but such as he deemed the best in his own opinion, for the promotion of their welfare, with which his own interest at this early period of the province must have been necessarily involved, and for the prosperity of which he must have felt the sincerest solicitude. It is observable, also, that no specific objections to any particular law or laws of those sent in by the lord proprietor, were made, but the opposition to their reception seems to have been founded solely on his assumption of the right of propounding them. We may suppose on the other hand, also, that his rejection of the laws, said to have been made by the colonists in 1635, before mentioned, was founded on this disputable right.† So that in the very infancy of the settlement, the contest for the right of propounding laws was likely to result in placing the colonists in that most dangerous situation of society, of living under a government without any known laws. The house of assembly, convened at this time, seemed to be sensible of this. We accordingly find, therefore, on the journal of the house the following entries, immediately succeeding those of the rejection of the laws, just mentioned.

How far
the laws of
England
were
deemed to
be in
force.

“Then question being moved, what laws the province shall be governed by, it was said by some, that they might do well to agree upon some laws till we could hear from England again.

“The president denying any such power to be in the house, captain Cornwaleys propounded the laws of England, the president acknowledges that his commission gave him power in civil causes to proceed by the laws of England, and in criminal causes, likewise, not extending to life or member, but in those

* Bacon's Laws of Maryland, anno 1637.

† See note (VII.) at the end of this volume.

he was limited to the laws of the province; there could be no punishment inflicted on any enormous offenders by the refusal of these laws.” CHAP. I.
1638.

“Whereupon the commission was produced and examined, and upon the reading of it, it appeared that there was no power in the province to punish any offence deserving the loss of life of member, for want of laws.”*

“To this they answered, such enormous offences would hardly be committed without mutiny, and then it might be punished by martial law.”

The house at this period of the business appear to have adjourned for dinner, but met again in the afternoon of the same day, when it was moved, “that the house would consider of some laws to be sent to the lord proprietor.”

“And the president advised, that they should choose some committees† to prepare the draught of them, and then the house might meet for confirming them; and in the mean time, every one might follow their other occasions.”

“So it being put to the vote, how many committees should be appointed for that purpose, they agreed that five should be chosen.” And five were accordingly chosen.

“It was then considered, for how long to adjourn the house, and it was thought fit to adjourn till the eighth of February following.”

“And because the court was to be held in the mean time, that is to say, on the third of February, that therefore the privilege of parliament should be void until the court were past, and all freemen might be arrested, as if no assembly were. And so the house broke up.”

The interval of ten days, for the committee to prepare the draughts of new laws, being elapsed, the assembly met again on

* The commission here alluded to, was most probably that sent in to the governor, bearing date the 15th of April, 1637, before mentioned, by which the governor and council were authorised, “where the *life, member, or freehold* of any person should happen to come in question, to inquire and determine according to *the laws of our said province*, and finally to give sentence and judgment thereupon, and to award execution accordingly.” The difficulty appeared to be, that according to the commission they could not proceed against offenders, in capital criminal cases, by the laws of England, but by their own particular local *laws of the province*; from whence it followed, that if there were no *laws of the province*, there could be no proceedings in such cases.

† It appears from subsequent proceedings of the house, that the word “committees,” here meant the members composing a committee. It was a phraseology in use at that time. See Hazard’s Collections, vol. 1, p. 410, 428.

CHAP. I. the eighth of February, according to their adjournment. The
 1688. committee, it seems, had, during this interval, prepared a new set of laws to be enacted by the assembly, and to be sent to the lord proprietary; but it appears also, that upon consultation during this short recess, it was thought proper to propose again the laws sent in by the lord proprietary.

The laws sent in by the lord proprietor again proposed.

“The committee reported to the house that they thought fit to read the former draught of laws again, and to put them to the vote the second time, in regard there was found a great deal of misunderstanding of them among the freemen, which made them to refuse them.

“And it being put to the vote of the house, whether they should be read again, or not, was affirmed by forty-eight voices, and denied by twenty-one voices.

“Then was an order made, by general consent of the house, that all bills propounded to the house for laws, should be read three times, on three several days, before they should be put to the vote.”

“Then was the draught of laws read through the second time, and twenty bills propounded by the committee, were read the first time.*

“Captain Cornwaleys desired it might be put to the vote of the house, whether these laws† at the third reading, should be voted severally, or the whole body of them together.

“And that they should be voted altogether, was affirmed by thirty-two voices, and denied by thirty-seven.”

The house upon this adjourned, (probably for dinner,) and met again in the afternoon of the same day. It is proper here to observe, that the inference to be drawn from this last vote of the house is, that the “misunderstanding,” before mentioned, “among the freemen,” relative to the laws proposed by the proprietor, was, that although they had previously rejected them altogether in a body by one vote, yet they did so, to manifest their displeasure at that mode of legislation; but were willing to affirm or admit any of them “severally,” when brought before the house in a constitutional way, as they apprehended, by a committee appointed for that purpose. This inference is strengthened by two circumstances; one of which is, that no

* “The draught of laws read through the second time,” must have been the laws sent in by the proprietor; and the “twenty bills,” those proposed by the committee.

† Viz. those sent in by the lord proprietor.

further proposition or vote, relative to the laws sent in by the lord proprietor, appears on the journal, and the other, that in the course of their meeting in the afternoon they appointed a committee for "preparing laws" against the next meeting of the house; some of which laws might possibly be the same as those sent in by the lord proprietor. CHAP. I.
1638.

"The house being sat, the president declared that he thought it fitting to adjourn the house for a longer time, till the laws, which they would propound to the lord proprietor, were made ready, which some would take care of, and in the meantime the company might attend their other business.

"Captain Cornwaleys replied, they could not spend their time in any business better than in this for the country's good; and one of the planters demanded the reason why it should be adjourned, and said they were willing to leave their other business, to attend to it. The president replied, he would be accountable to no man for his adjourning of it.

"Then captain Cornwaleys moved, that at least a committee might be appointed, that should take charge of preparing the laws till the house met again; and it being put to the house, they agreed that three committees* should be appointed. Then every one nominating severally his three committees, the president had forty-six voices, captain Cornwaleys had fifty-six, captain Evelyn forty-four, Mr. Lewger thirty-one, Mr. Snow five, and captain Fleete four.

"Then it was ordered, that privilege of parliament-men for their persons, should not be allowed till the next meeting of the assembly.

"Then the president adjourned the house till the twenty-sixth day of February."

From what fell from captain Cornwaleys, in the foregoing proceedings, in his proposition for adopting the laws of England, it might be inferred, that the laws of England had never yet been put in practice among the colonists, although full three years had elapsed since their first settlement at St. Mary's. It must be confessed, that this observation of his, cannot at this day be easily accounted for, since it is certain, that the earliest records of the province seem all to indicate, that the whole of their proceedings, both legislative and judicial, were conducted according to those laws, except, as observed in the house of

* Three members of a committee, as before.

CHAP. I. assembly, "where life or member was to be affected." Indeed,
 1638. the subject that so often occurs on the little journal of the house, before quoted, as to "privilege of parliament," in exempting the members of the house from arrest, presupposes the common law of England as to this purpose in force; for, if there were no local *laws of the province*, nor any *common law*, from whence could this privilege arise? We are, therefore, to construe Mr. Cornwaleys' proposition to this effect: that the laws of England, so far as they were applicable to the local circumstances of the colonists, were *to be continued* to be used and practised by them; and that a legislative *declaration* to that purpose should be made.

Courts of
justice
held.

In confirmation of this construction of the foregoing proposition, we are to observe, that in a few days after the assembly rose, courts of justice were held at St. Mary's, in which the proceedings appear to have been in exact conformity to those laws. A court "for testamentary causes," composed of the governor and council, was held on the 12th of February; in which letters of administration were granted on the estates of divers deceased persons, and proceedings had, as in the same kind of courts in England. On the same, or succeeding day, a court, called in the records, a *county court*, was holden before the lieutenant general, captain Robert Winton, and Mr. John Lewger; at which a grand jury was impanelled and sworn, and two bills of indictment for piracy and murder were sent up to them, and found true bills. These indictments appear to have been drawn according to English precedents, and the technical phraseology used in them according to the established practice of the criminal laws of England. As these indictments, which have been before alluded to, related to those political incidents of the province occasioned by Clayborne's resistance to the lord proprietor's right and authority over the isle of Kent, some more particular notice of them will be necessary.

Proceed-
ings there-
in against
Clay-
borne's
party.

The first of these indictments charges:—"Let inquest be made for the lord proprietor, if in the river Pocomoque, on the eastern shore, on the twenty-third day of April, in the year 1635, Thomas Cornwaleys, esqr. one of the commissioners of this province with divers other persons of the company and servants of the said Thomas Cornwaleys, being in two pinnaces, called the St. Helen and the St. Margaret, in the peace, &c., Ratcliff Warren, commonly known by the name of lieutenant Warren, Richard

——,* and Robert Lake, with divers others, to the number of CHAP. 1.
 fourteen persons, or thereabouts, &c., in one pinnace belonging 1638.
 to William Clayborne, of the isle of Kent, gentleman, with
 force and arms, &c., on the day aforesaid, in the place aforesaid,
 upon the two pinnaces aforesaid, feloniously, and as pirates and
 robbers, an assault did make, and upon the said Thomas Corn-
 waleys and his company, divers guns charged with powder and
 bullets, did shoot and discharge, &c., and one William Ashmore,
 of St. Mary's, apprentice in the pinnace aforesaid, the day and
 year aforesaid, at the place aforesaid, did shoot and wound in
 the breast, on the left side, near the left papp, of which wound
 the said William Ashmore instantly died; and if the said Wil-
 liam Clayborne did encourage and instigate, and abet the said
 lieutenant Warren, to make and attempt the said assault upon
 the pinnace aforesaid, or upon any other the pinnaces, boats, or
 vessels belonging to St. Mary's; and if the said William Clay-
 borne did, by a special warrant or commission, under his hand,
 command, warrant, and authorize the said lieutenant Warren to
 seize, take, and carry away the pinnaces or other vessels be-
 longing to St. Mary's, contrary to the peace of the sovereign
 lord the king, his crown and dignity, and contrary to the peace
 of the said lord proprietor, his domination and dignity."

The other indictment is against Thomas Smith, gentleman,
 and three other persons, planters, for the murder of the same
 William Ashmore, and is in other respects, the same as the for-
 mer indictment, *totidem verbis*, except as to time and place, as
 follows: "Let inquest, &c., if in the harbour of great Wiggo-
 moco, in the bay of Chesapeake, on the tenth day of May, in
 the year of our Lord 1635, Thomas Cornwaleys, esq. one of the
 commissioners of the province, Cuthbert Hemirk, and John Hol-
 lis, servants of the said Thomas Cornwaleys, being in the good
 pinnace called the St. Margaret, in the peace, &c., Thomas
 Smith, of the isle commonly called Kent, gentleman, Philip
 Tailor, Thomas Duffil, and Richard ——,† planters, together
 with divers others, to the number of fourteen persons, or there-
 abouts," &c., and so on, the same as the former indictment,
 charging William Clayborne also, as accessory before the fact,
 in the manner as before.‡

* The surname here in the record is not legible.

† The surname here in the record is not legible.

‡ See the record of these indictments, in an old thin leather book, (in the
 council chamber,) entitled, "Council Proceedings from 1637 to 1644," without
 pages.

CHAP. I. On account of the deficiency in the laws, and the exception
 1638. in the lieutenant general's commission, before mentioned, so that no capital punishment could be adjudged by any court of the province then existing, the trials on these indictments were postponed until the next meeting of the assembly.

The inha- Notwithstanding these proceedings, and although Clayborne
 bitants of had, before this, departed for England, yet it seems, that the in-
 the isle of habitants of the isle of Kent, were far from being at this time
 Kent re- quiet and obedient to the lord proprietor's government. The
 fuse to authority of the provincial government was yet so openly con-
 submit. temned and resisted, by many of the inhabitants of that island, as to render it necessary for the governor to proceed thither with an armed force, to quell and punish the refractory and disobedient. We find in the records of the "Council Proceedings" of this period, an entry explanatory of the reasons and causes of this measure of the government.

Governor "By the governor and council, this 12th of February, 1637,"
 Calvert (1638, N. S.) "the governor and council, taking into consid-
 proceeds ration the many piracies, insolencies, mutinies, and contempts
 with a mi- of the government of this province, formerly committed by di-
 litary force vers of the inhabitants of the isle of Kent, and that the warrants
 against sent lately into the said island, under the great seal of the pro-
 them. vince, for apprehending some malefactors, and to compel others to answer their creditors in their lawful suits of debt or accompt, were disobeyed and contemned, and the prisoners rescued out of the officers' hands, by open force and arms; and being now newly informed, that divers of them do maintain and protect themselves in their said unlawful and rebellious acts, did practice and conspire with the Susquihanoughs and other Indians, against the inhabitants of this colony, have thought it fit, that the governor should sail, in person, to the said isle of Kent, and take along with him a sufficient number of freemen, well armed, and there, by *martial law*, (if it shall be necessary,) reduce the inhabitants of the said island to their due obedience to the lord proprietor, and by death, (if need be,) correct mutinous and seditious offenders, who shall not, (after proclamation made,) submit themselves to a due course of justice; and for his better assistance herein, it was thought fit, and so ordered, that captain Thomas Cornwaleys, esquire, and one of the council of this province, should go along with the governor, and be aiding and assisting to him, to the uttermost of his power, for the

command of the forces, according to such directions as he shall receive from the governor during the expedition. CHAP. I.
1638.

Signed,—Leonard Calvert,—Jerome Hawley,—John Lewger.”*

Preparatory also, to this expedition, the governor issued his proclamation, reciting, that “Whereas this present general assembly, begun on the 25th day of January, last past, and by several adjournments, continued until the 8th of this instant month of February, was then adjourned until the 26th of this instant month, now designing, at this present, to make an expedition in person, unto the isle of Kent, and doubting, lest some accident might hinder my return to St. Mary’s, afore the said day, whereby the assembly would of itself be dissolved, for want of power to assemble: know ye, therefore, that in case of such my absence, I have authorized and deputed Mr. John Lewger, secretary, in my name and place, to hold and convene the said assembly, at the day appointed, and to give voice for me to all such things as he shall think fit, also to adjourn or dissolve the said assembly, and to do all things in my stead, &c.

Secretary
Lewger
authorised
to hold the
assembly.

LEONARD CALVERT.”†

During the governor’s absence from St. Mary’s, the assembly met on the 26th of February, 1637, (1638, N. S.) according to adjournment. But after ordering “that privilege of parliament be suspended till the next meeting,” the house was adjourned till the 5th of March next.

The house met on the 5th of March, according to their last adjournment; but, the governor being still absent, “Mr. Secretary adjourned the house till the 12th of March following.”

“And the house ordered, that privilege of parliament should be suspended till the next meeting.”

The house met on the 12th of March, according to their adjournment; and the governor, being now returned‡ was present, and presided as speaker.

“Privilege of parliament was affirmed;” and the twenty bills draughted by the committee, which were formerly read, at the session on the eighth of February, were now read a second time.

* See the Provincial records, entitled “Council Proceedings, from 1636 to 1657,” p. 26, 27.

† Ibid. p. 28.

‡ The few reliques of records, relative to our history at this period, afford no trace of any of the proceedings of the governor and his suite on the isle of Kent during this his visit thereto.

CHAP. I. The house meeting again on the next day, (the 13th of March,) fourteen other bills were then read for the first time.

1638. Which bills were again read on the succeeding day, (the 14th of March,) together with three other bills for the first time; one of which last was "for the attainder of William Clayborne, gentleman."^{*}

Act of at-
tainer
against
William
Clayborne.

The reader will observe, that Clayborne was charged as an accessory before the fact, to the murder and piracy, stated in the bills of indictment, before mentioned, found by the grand jury. On account of the deficiency of the laws, as before stated, the intervention of the legislature was deemed necessary, against both Clayborne and Smith. The former not being taken, the proceeding against him was by a bill of attainder; by which, his property within the province, became forfeited to the lord proprietor.† The latter being still held as a prisoner, he was, in the afternoon of this day, (the 14th of March,) arraigned and tried before the house, sitting as a court of justice. As the proceedings of a legislature, (under the degree of a house of lords,) acting in a judicial capacity, were even at this time uncommon, it is thought that an insertion of them here, as they appear on the records, will not be deemed improper.

Trial of
Thomas
Smith, one
of Clay-
borne's
men.

"Then was Thomas Smith called to the bar, being indicted of piracy, and Mr. Secretary made himself attorney for the lord proprietor, and read his lordship's warrant in that behalf. Then did the attorney put in the indictment, and demanded that the prisoner might be arraigned upon his indictment; and the indictment being read, he pleaded not guilty.

"Then did the attorney inform the house upon the indictment, and produced the depositions of John Tarbison and Arthur Brooks; and the prisoner pleaded all he had to say in his defence, and the attorney replied to it: and when the prisoner had no more to allege for himself, he was demanded whether he would challenge any in the house that were to pass upon him, and he challenged none; then they gave their votes, and he was found guilty by all the members except *one*.‡

^{*} Although no copies of any of the bills or laws, passed at this session, are now to be found on our records, as before mentioned, yet, according to Chalmers's Annals, (ch. ix. note 20,) a copy of this act of attainder still remains in the Plantation office, England, "among the Virg. pap. 75 B. p. 126."

† See note (VIII.) at the end of this vol.

‡ The name of this dissentient member, as on the record, is not easily legible, but it appears to be *John Halfshide* or *Halfsheade*.

“Then was sentence pronounced by the president, in the name of all the freemen in these words: CHAP. I.
1638.

“Thomas Smith, you have been indicted for felony and piracy; to your indictment you have pleaded not guilty; and you have been tried by the freemen in this general assembly, who have found you guilty, and pronounce this sentence upon you: that you shall be carried from hence to the place from whence you came, and thence to the place of execution, and shall be there hanged by the neck until you be dead, and that all your lands, goods, and chattels, shall be forfeited to the lord proprietor, saving that your wife shall have her dower, and God have mercy upon your soul.

“Judgment affirmed and approved by special consent, by word of mouth, by captain Cornwaleys” and others (named in the record,) sixteen in number.*

“Then did the prisoner demand his clergy; but it was answered by the president, that clergy could not be allowed in his crime, and if it might, yet now it was demanded too late after judgment.”†

It will be recollected, that in the rencounter between captain Cornwaleys and his company with Clayborne’s men before mentioned, several persons of the latter party were said to have been killed by the fire of Cornwaleys’s men in resisting the attack upon them first made by Clayborne’s party, as alleged by those of Cornwaleys. Inquiry by the assembly into the conduct of captain Cornwaleys. It was, therefore, deemed necessary by the house, that inquiry should be made by them of these facts, and their proceedings thereon, appear upon the records to have been as follows:

“Then departed out of the house, captain Cornwaleys, Cuthbert Fennick, William Lewis, John Nevill, Anthony Cotton, Edward Fleete, and Cyprian Thoroughgood.

“Then was the house moved by the attorney to inquire of the death of William Ashmore, Ratcliff Warren, John Bellson, and William Dawson, and the house having heard the evidence of Cyprian Thoroughgood, John Nevill, Cuthbert Fennick, and Edward Fleete did find that the said Ratcliff Warren, John Bellson, and William Dawson, with divers others, did assault the

* By this the whole house of assembly must at this time have consisted of seventeen members, including John Halseheade the dissentient.

† No subsequent mention of Thomas Smith appears on the records, nor is it certain what was his final fate. It is probable, that he was executed in pursuance of his sentence.

CHAP. I. vessel of captain Cornwaleys and his company, feloniously and
 1638. as pirates and robbers to take the said vessel, and did discharge
 divers pieces charged with bullett and shott against the said
 Thomas Cornwaleys and his company, whereupon and after such
 assault made, the said Thomas Cornwaleys and his company in
 defence of themselves and safeguard of their lives, not being
 able to fly further from them, after warning given to the
 assailants to desist from assaulting them at their own peril,
 did discharge some guns upon the said Ratcliff and his company,
 of which shots the said Ratcliff Warren, John Bellson, and
 William Dawson died, and so they find that the said Thomas
 Cornwaleys and his company did lawfully, and in their own ne-
 cessary defence kill the said Ratcliff Warren, John Bellson, and
 William Dawson, and do acquit the said Thomas Cornwaleys
 and his company of the death of the said Ratcliff Warren, John
 Bellson, and William Dawson.

“And they further find, that the said Ratcliff Warren and his
 company did discharge their guns against the said Thomas Corn-
 waleys and his company, and did kill the said William Ashmore,
 being one of the company of the said Thomas Cornwaleys, as
 felons, pirates and murderers.”

That the assumption of judicial power by the house of as-
 sembly at this time, was not confined to Smith's case, appears
 from the journal of the house for the succeeding day, (the 15th of
 March,) where an entry appears of the following purport: “Then
 was fined to the lord proprietor Thomas Baldrige, 40*lb.* tobacco for
 striking John Edwards.” It is true, that this might have arisen
 from the fact being perpetrated in the presence of the house, on
 which occasion, by the law of parliament, they would have had
 power to impose the punishment of imprisonment as for a con-
 tempt; but the journal does not authorise this supposition of the
 circumstances of the case.

Resolution of the as-
 sembly re-
 lative to
 servants. Another entry on the journals of the house, of the 17th of
 March, may perhaps be deemed worthy of notice, as tracing a
 feature of the early habits, manners, and customs of our ances-
 tors:—“Then upon a question moved touching the resting of
 servants on Saturday in the afternoon, it was declared by the
 house that no such custom was to be allowed.” It may be re-
 marked, that notwithstanding this declaration of the legislature,
 the custom has in some measure, even with slaves, prevailed
 throughout the province.

On the last day of the session, (March 24th,) which, according

to old style, was the last day of the year 1637, the several bills which had been prepared to be passed by the house were now "fairly ingrossed and read, and after the reading of them the governor signed them, and so did the rest of the house. And so the house dissolved." CHAP. I.
1638.
The assembly dissolved.

However beneficial and necessary for the province those laws now enacted by the assembly, and assented to by the governor, might have been, yet it seems when they were sent to England and propounded to the lord proprietor for his assent, he thought it proper to reject them. Of his reasons for so doing, we are no where positively informed; but the same conjecture we have before ventured, may be again hazarded;—that he had resolved to retain the right of first propounding the laws to be enacted by any assembly of his province. Although a complete list of the *titles* of these laws remains upon our records, yet the laws themselves at large are not extant,* no copies of them appearing upon our records.† Many of those laws were, probably, afterwards re-enacted under the same or similar titles. The contents of some of them, however, to which we do not find subsequently any with titles similar, would interest our curiosity even at this day, particularly the first on the list, entitled, "A bill for dividing of the province." From the titles of several bills immediately following, relative to manors, and one entitled, "A bill for Baronies," we are induced to suppose, that besides the division of the provinces into counties, a further division of the same was contemplated into baronies and manors, with their feudal appendages of courts-baron and courts-leet. This may, probably, have been the cause of its being stated by some writers, that the province was originally divided into baronies and manors. Although many manors were subsequently laid out and granted to individuals, yet it does not appear, that in the division of the province into *baronies*, (at least in the feudal sense of the word,) was ever carried into effect; for we are told, that "no grant of a barony is to be found on record."‡ Another title of the bills of this session, to wit, "A bill for settling of the

* Except that for the attainder of William Clayborne, a copy of which, according to Chalmers, as before mentioned, is still extant in the Plantation office, England.

† See a complete list of them published in Bacon's edition of the Laws of Maryland, 1637, where it is said, "They were never enacted into laws;" meaning, without doubt for want of the lord proprietor's assent to them; "nor are any copies of them, or of those sent in by his lordship, to be found in our records."

‡ See note (IX.) at the end of this volume.

CHAP. I. *Glebe*," attracts notice. As the word *glebe* is synonymous to
 1638. *church-lands*, it implies, that a church establishment was contemplated by the first settlers of the province, who being, as may be presumed, principally Roman Catholics, intended that sect of the christian religion to be the established church of the province.

In a few days after the dissolution of the assembly, the governor, it seems, formed an intention of visiting the colony of Virginia. This appears from an instrument of writing, bearing date, April 1st, 1638, in which he states, that "being to be absent for a while, out of this province, in Virginia, he assigns, deposes, constitutes, and appoints his respected friend Mr. John Lewger, secretary of this province, to be in his place and stead lieutenant-general of this province during his absence and no further or longer."* Whether he put in execution this intention or not, or what business of importance called him there, we are not informed. A similar instrument of writing, or commission, was afterwards, on the 27th of May, 1638, executed by him to captain Thomas Cornwaleys, esqr. in nearly the same words and with a similar intention of being "absent for a while out of this province in Virginia."† On the same day last mentioned, and probably with a like view, he issued a commission to John Boteler, appointing him "captain of the militia band of the isle of Kent, and giving him full power to muster and train all sorts of men able to bear arms within the said isle, (the commander of the said island only excepted,) and in case of any sudden invasion of savages or pirates to make war, as likewise to execute martial law against any mutinous or disorderly persons, and to make and publish any orders which he should think fit for the defence and safety of the island, enjoining all persons whatsoever within the said island to subserve the said orders and commands of him the said John Boteler in all matters concerning martial discipline."‡

* "Council Proceedings from 1636 to 1657," p. 29.

† This commission to captain Cornwaleys is in an old thin book, entitled "Council Proceedings from 1637 to 1644," most of the contents of which, this commission and some other important documents excepted, are transcribed into a larger parchment book, entitled "Council Proceedings from 1636 to 1657." Mention is here made of this circumstance to point out a small variance in the references here used. These commissions, in case of the absence of the governor out of the province, are authorised by the before mentioned *Ordinance* of the lord proprietary, bearing date April 15th, 1637.

‡ "Council Proceedings from 1636 to 1657," p. 31.

Clayborne having been sent to England by the governor of Virginia, or having voluntarily himself returned thither, after the military outrage committed by his men, through his orders, on the Maryland colonists, as before mentioned, he preferred a petition to the king, in order to obtain redress of the "wrongs and injuries," which he had sustained, as he alleged. The imperfect copy of this petition now remaining on our records, has no date; but from the proceedings of the privy council thereon, it would appear to have been presented on or about the 26th of February, 1637, O. S. (1638, N. S.) This petition in substance states, that he (William Clayborne,) and his partners, (who, from a subsequent document, appear to have been a certain William Cloberry, and David Morehead, merchants of London, in England,) by virtue of a commission under his majesty's hand, divers years past,* discovered and planted the isle of Kent in the bay of Chesapeake, which island *they bought of the kings of that country*; that great hopes for trade of beavers and other commodities were like to ensue by the petitioners' discoveries; and that lord Baltimore, observing this, had since obtained a patent; within the limits of which he comprehended the said island; that on complaint thereof his majesty had signified his royal pleasure by letter, intimating therein, that it was contrary to justice and the true intent of his majesty's grant to lord Baltimore, and also that his majesty in the said letter directed, that notwithstanding the said patent to lord Baltimore, the petitioners should have freedom of trade, and required the governors and all others in Virginia to be aiding and assisting to them, and forbade the lord Baltimore or any pretenders under him, to offer them any violence, or disturb or molest them in their plantations, "as by the said letter annexed to this petition appeareth."† The petition proceeds to state, that although his majesty's pleasure had been made known to the governor of Virginia,‡ (who slighted the same,) as also to the lord Baltimore's agents in his province, yet they had, in a most wilful and contemptuous manner disobeyed the same, and violently set upon the petitioners' pinnaes

CHAP. I.
1633.
William
Clay-
borne's pe-
tition to
the king
in council,
and order
thereupon.

* This must refer to the instructions of the king, under which several commissions or licenses were granted by the governors of Virginia, during the years 1627-28-29, to William Clayborne to discover the source of the bay of Chesapeake, as before stated in the introduction to this volume.

† I do not find any such letter extant upon the records of the province, or elsewhere. It is not to be doubted, however, but that a letter of that import was signed by his majesty.

‡ This must have been Sir John Harvey; for Sir William Berkeley, his successor, was not appointed governor of Virginia until the year 1689.

CHAP. I. and boats, &c. The petition then rehearses the transaction of
 1638. the petty battle before mentioned, between captain Cornwaleys and Ratcliff Warren.

It is further stated in the petition, that the petitioners had discovered and settled a plantation and factory upon a small island,* in the mouth of a river, at the bottom of the said bay, in the Susquehanock's country, at the Indians' desire, and purchased the same of them; by means whereof, they were in great hopes to draw thither the trade of beavers and furs, which the French then wholly enjoyed "in the grand lake of Canada;" but lord Baltimore had interrupted them and seized their possessions.

The petitioners then propose in their petition to pay to his majesty the annual sum of £100, viz: £50 for the isle of Kent, and £50 for the said plantation in the Susquehanock's country; to have there twelve leagues of land on each side of the river, extending from the mouth to the head of the said river, and "to the grand lake of Canada;" to be governed according to the laws of England, with such privileges, as his majesty should please to grant.

The petition then prays his majesty, to grant a confirmation of his former commission and letter, before mentioned, for the quiet enjoyment of their said plantations; and to refer the examination of their wrongs and injuries to such persons as his majesty should think fit.

The petitioners appear to have succeeded so far, that their *proposals* were approved by his majesty in council; that he confirmed (verbally, as it would appear, whilst sitting in council,) "what was contained in his former commission and letter under the broad seal;" and that a reference was made to the commissioners for plantations, to prepare a grant agreeably thereto for the king's signature, and to examine the wrongs complained of.†

We may stop here just to remark, that had Clayborne and his partners been so fortunate as to have obtained the grant they now prayed for, (to wit, twelve leagues or thirty-six miles on each side of the Susquehanah to "the grand lake of Canada," which we may suppose to have been lake Ontario,) his province would not only have been thrown into an absurd serpentine form, but would have thwarted the general plan manifestly intended in all the first grants of the British colonies, to wit, of giving them

* Afterwards called *Palmer's* island.

† See this petition and the proceedings of the council thereon, at large in note (X.) at the end of this volume.

a certain breadth on the sea-board, and extending them in parallelogram across the continent to the Pacific ocean. William Penn's inheritance would have been anticipated, or spoiled; and a large portion of the Dutch province of New Netherlands lopped off; though, possibly, some small national benefit might have arisen from a participation in the northern fur trade. This consideration seems to have been artfully introduced by Clayborne, as a lure or bait to catch the cravings of the needy monarch. The colonization of Canada demonstrates, that the immediate profits arising from a commerce in peltry and fur are stronger incentives to a speedy settlement of colonists in an uncultivated wilderness, than the slow but more certain and permanent benefits accruing to the mother country from populous and well cultivated colonies. Lord Baltimore's motives were purely political and religious; Clayborne's were founded on private self-interest, though plausibly holding out at the same time the possibility of immediate commercial advantages to the nation or its monarch. But these advantages must necessarily have vanished with the increasing population of the country, as the events of the present day have demonstrated.

The apparently sudden resolution of the king in council, on the foregoing petition, is not easily to be accounted for at this day. It may be inferred, that Clayborne had some powerful friends near the person of the king; and from the facts advanced by a learned annalist,* it would appear that the king's secretary for Scotland, Sir William Alexander, who was then or had lately been interested in the establishment of a colony in Nova Scotia, under the hope of promoting a beneficial traffic between that country and Virginia, had taken Clayborne under his patronage. Some repugnancy or contradiction in the dates of the several documents, relative to this petition of Clayborne, throw an obscurity also over the whole transaction. The learned annalist, just mentioned, has furnished us with a copy of the decision of the lords commissioners of the council, to whom, as he says, "this *tedious* controversy was referred," and "after hearing all parties," they made their adjudication "in April, 1639."† But, from the copy of this state paper, now extant on the Maryland Records, corroborated by numerous other documents, which re-

* See Chalmers's Annals, ch. iv. and ch. ix.

† The copy of this decision, which Mr. Chalmers has given us, (in his Annals, ch. ix. note 25,) purports to have been taken by him,—“From Maryland Papers, vol. 1, bundle C.” in the Plantation Office, England.

CHAP. I. cognize and refer to the decision of the council, we are induced
 1638. to adhere to the date, which they have annexed to it, and that the lords commissioners made their final adjudication within a little more than a month after the reference to them, as before mentioned, on the fourth of April, 1638. The substance of their adjudication was,—“that the lands in question absolutely belonged to lord Baltimore, and that no plantation, or trade with the Indians, ought to be allowed, within the limits of his patent, without his permission, that with regard to the violences complained of, no cause for any relief appeared, but that both parties should be left to the ordinary course of justice.”*

Within a few months *after* this decision of the lords commissioners, but, as we may fairly conjecture from circumstances, *before* the lords commissioners had “certified his majesty what they had thought fit to be done,” agreeably to the terms of the reference before stated, that is, *before* his majesty had seen or known their adjudication, Mr. Clayborne, assisted by Sir William Alexander, his patron in the business, “partly by misrepresentation,” as the before mentioned annalist observes, procured in July, 1638, a royal order to lord Baltimore, commanding him to allow Clayborne and his agents or partners, to enjoy their possessions, and be safe in their persons and goods, till the cause referred, as before mentioned, should be decided.† Lord Baltimore, on receiving the order, (as the annalist proceeds to state,) “with an attention which he deemed due to the commands of his prince though founded on misinformation, said: that he would wait on the king, and give him perfect satisfaction.”‡ Subsequent events justify us in supposing, that when the king came to be fully informed of all the circumstances relative to Clayborne’s claims and lord Baltimore’s rights, the adjudication of the lords commissioners was finally ratified by his majesty, and in the terms of that decision, “both sides were left to the ordinary course of justice.”

In virtue of this decision of the lords commissioners, and, most probably, in pursuance of some special order from his majesty to that purpose, the governor of Virginia (Sir John Harvey,) issued his proclamation, bearing date “the 4th of October, *Anno Regni Regio Caroli decimo quarto, Annoy. Domi. 1638,*” expressly for the purpose of prohibiting “all persons inhabiting

* See this State Paper at large, in note (XI.) at the end of this volume.

† See this order or letter in note (XII.) at the end of this volume.

‡ For this he cites “Virg. Pap. 75 B. p. 147.”

within Virginia to use any trade or commerce for any kind of commodity whatsoever with any of the Indians inhabiting within the province of Maryland, viz. northward from the river Wiconowe, commonly known by the name of Onancock, on the eastern side of the grand bay of Chesapeake, and northward from the river Chinquack called great Wicocomico on the western side of the said bay,* without license from the lord Baltimore or his substitute, upon forfeiture of their goods and vessels, and such imprisonment of the party offending, as should be thought fit by the government and council” of Virginia.†

CHAP. I.
1638.

It would be unnecessary to undertake, at this day, a full justification of the preceding report or decision of the lords commissioners. It may, however, be again remarked, that Clayborne's views partook more of private emolument than public good. It is true, that promoting the fur-trade might have been a national benefit. But it is to be remembered, that national prosperity was supposed, at that time, to be much involved in the settlement of colonies. The social feelings of humanity, as well as moral sentiment, seem to urge a strong claim of preference, where the object is to indulge our fellow-beings in their religious opinions. Clayborne's intentions were mingled with no such sentiments. The settlement of a numerous colony on the frontiers of Virginia, also, was certainly adding to that province additional security against the hostilities of the savages. If it be true, as asserted, that the settlement of the colony of Maryland cost lord Baltimore, for the two first years only, forty thousand pounds sterling;‡ it is not probable that Clayborne, with even the assistance of his partners, could have afforded to expend the necessary requisites for the establishment of an adja-

* From these expressions in this proclamation it may be inferred, that the thirty-eighth degree of latitude was then deemed to cross the eastern shore of Virginia as low down in Accomack county as Onancock creek, or at least that the southern limits of Maryland extended that far south. As to the restriction of the Virginians in their Indian trade on the western side of the bay, within the *Chinquack*, called great Wicocomico river, it is not impossible, that, in consequence of the expression in the charter of Maryland as to the south bounds thereof,—“following the *Pattowmack* on the west and south, unto a certain place called *Chinquack*, situate near the mouth of the said river”—*Pattowmack*, the southern limits of that province, at least as to the jurisdiction over the bay of Chesapeake, were deemed to extend to the mouth of the *Chinquack*. It is probable, that most of the trade with the Indians was at that time carried on by water, in different parts of the bay and its tributary streams.

† See this proclamation at large in note (XIII.) at the end of this volume.

‡ Chalmers's Annals, ch. ix.

CHAP. I. cent colony, convenient and ready for affording aid to Virginia
1638. on any sudden emergency. Their proposed colonization on the banks of the Susquehanah would have been, at that time, too remote for such a purpose. There appear, even at this day, sufficient reasons for granting the territory in question to lord Baltimore, notwithstanding the previous *licenses to traffic*, which had been before granted to Clayborne. Indeed, the question seems to have been, in some measure, decided by the government of the United States since their independence. Congress have regulated by law, the trade and intercourse to be carried on by the citizens of the United States, with the several tribes or nations of Indian natives, resident within that part of the continent of America, which the United States claim as their territories. They have enacted, that no person shall trade with the Indians, without *special license* obtained from the government of the United States for that purpose.* This is, without doubt, founded on good policy; it tends to prevent individual citizens from acting in such manner with the savages, as to irritate and cause them to make attacks on the peaceable frontier settlers. These laws, moreover, forbid such *traders* from making purchases of lands from the Indians, the United States claiming that privilege alone, for the government in its corporate capacity. Should any trader, therefore, obtain by purchase or voluntary grant from the Indians, even as much land as would suffice for him to put a temporary trading-house thereon, and should occupy the same for many years, during his license for such trade, and the United States should "extinguish the Indian claim" to such lands, as included the trader's purchase, or, (what in the opinion of some philanthropists amount to the same thing) take the same lands from the Indians by force, and make sales and grants thereof to such of their citizens as would purchase the same; it is apprehended, that such *licensed trader* would not be admitted to contend, that he had bought his house and land from the Indians, and the United States had, therefore, no right to sell or to give it away to any other citizen. He would probably be told, and very properly too, that the United States, being about to fix a colony or settlers in that part of their territories, had made a grant of the same to a company, who were about to settle thereon, and, if he wished to possess any lands there, he must purchase of the government or of its grantees,

* See the acts of congress of 1799, ch. 152; and 1802, ch. 13.

like any other citizen, his purchase of the Indians being illegal and contrary to the true policy of the United States. Nay more, the president would be authorised by law to use *military force*, in driving him from those lands, of which he had so possessed himself. Now, this statement precisely comprehends Clayborne's right and claim, although king Charles I. might have had no right to dispossess the Indian natives of the country which they inhabited, yet he certainly, as the representative of the nation of which he was the monarch, had as much right to the Indian lands of America, as the government of the United States now have; his grants thereof were equally just, and therefore equally valid. The pretended or real purchase of an individual *licensed trader*, (as Clayborne was,) of the Indian natives, could not, nor ought not to have precluded the king from making a grant thereof to a company, or to an individual possessing equal means, such as lord Baltimore, who would undertake to transport thither a numerous colony of his subjects, for the benefit of the mother country. The severance of a portion of the territory of Virginia was really beneficial to that colony, inasmuch as the addition of such a number of their fellow-subjects, seated on their frontiers, would contribute much to their security from the hostile invasions of the savages. This benefit was not likely to arise from the manner in which Clayborne, with his fellow-traders, were going on. Thus, it would seem, there was in reality no injustice done to any individual whatever, by the grant of the province of Maryland to lord Baltimore; and, if the policy of planting distant colonies is really beneficial to an over-populous country, and the measure be dictated also by the liberal generosity of indulging mankind in their religious opinions, the unfortunate Charles may be said to have done at least one act, in his life, with which posterity ought not to reproach him.

To close the lord Baltimore's contest, at this time, with Clayborne and his adherents, it will be proper to take notice here of some proceedings of the Maryland government at St. Mary's against Clayborne's property, and that of his partners, still remaining on the isle of Kent. The two merchants of London before mentioned, William Cloberry and David Morehead, whom Clayborne had taken into partnership with him, possibly with a view to the establishment of a fur-trade, had, by furnishing intelligence and "sundry supplies of men, arms, and other commo-

CHAP. I. dities, ministered succour and means to the said William Clayborne, to defend and maintain the said island against the lord Baltimore's just right and title, and to drive a trade with the Indians of his province." They had also, it seems, contemplated the establishment of a lumber-trade on that island, and for that purpose had sent out from England coopers and workmen, who had felled a great quantity of timber for making pipe-staves, to the value, as is stated, of £1000 sterling. These still remaining on the island, with perhaps other property appertaining to the partnership, the government at St. Mary's thought it proper to proceed against them in a legal manner, and accordingly a writ of attachment (dated January 2d, 1638, O. S.) was issued for the seizure of these pipe-staves, as well as other goods and chattels belonging to the partnership; which writ we may suppose to have been legally and effectually executed; for, it appears, that his lordship's provincial government was in quiet possession of that island in the month of December next preceding the date of the writ.*

The nature
of their
traffick
with the
Indians.

As the profits arising from the traffic with the Indian natives was one of the principal causes operating with Clayborne and his party in so strenuously resisting the authority of lord Baltimore over the isle of Kent, it would be a desirable circumstance, could we furnish the reader with a satisfactory account of the nature of such traffic. But our records afford few materials for that purpose. From the uniform sameness, which pervades the savage life among the aborigines of North America, it will readily be supposed, that it could not be much variant from the traffic with them of the present day. Peltry, in its various kinds, without doubt then constituted a considerable staple.† We find also, that much barter was at that time carried on with them for that useful article of human life,—maize, or Indian corn. It is probable, however, from the favourable circumstances attending their first settlement, that the Maryland colonists were not quite so dependent on the Indians for sustenance, particularly as to corn, as those of Virginia had too frequently suffered themselves to be; but we may suppose, that the Virginians were by this time able to spare them some bread-stuff, when they should be occasionally in want of it; and we are told, that “the

* See a copy of this writ in note (XIV.) at the end of this volume.

† See note (XV.) at the end of this volume.

new comers" of Maryland furnished themselves with hogs, poultry, and some cows from Virginia.* CHAP. I.
1638.

It ought to be observed also, that there was at this time in Maryland, as well as in the more early times of the colonization of Virginia, some peculiar articles apparently of trifling value, which formed both a subject and a medium of commerce with the natives of our continent, and which we do not find mentioned by the traders among them of the present day.† As a fondness for personal ornament seems to be deeply engrafted in the human character, whether civilized or savage, whatever contributes to the gratification of this passion, being always in demand, acquires an artificial value. Hence with all our early voyagers to the continent of America, we find that *glass beads* were a more essential article for traffic with the natives than either dollars or guineas; and hence the colonists of Virginia were induced in the year 1621, to set up a manufactory of that article, as a mint for the coinage of a current medium of commerce with the Indians.‡ The aborigines were not, however, prior to the arrival of the Europeans, destitute of a substitute for this article. A species of manufactory, subsisted among them in their rude state, of pieces of the *Conck* or *Cockle* shells, so wrought and perforated as to be strung upon strings, and being highly polished and of variegated colours were used as ornaments to the person, particularly with the female sex, as necklaces and bracelets of pearl or other valuable jewelry are now worn by the belles of London and Paris. Those manufactured by them of the *Conck* shell, they called *Peak*; those of the *Cockle* shell, they called—*Roenoke*: the latter being esteemed of much less value than the former. We find, that both these articles were industriously procured by the early colonists of both Virginia and Maryland, as a subject of barter, or medium of traffic with the natives for the more useful articles of maize and peltry; and it appears, that they were counted sometimes by the yard, fathom, or arm's length, and sometimes by the bushel; most probably in the latter way before they were strung, and in the former afterwards.§

* Oldmixon's Brit. Emp. in Amer. vol. 1, p. 189.

† It is stated, in the journal of Lewis and Clark's expedition in 1804, that the Indians on the sources of the *Columbia* river, estimate *beads* as of more value than any other article, that can be offered to them. It would seem, that these Indians had never been in the habit of any intercourse with white men.

‡ Burk's Hist. of Virg. vol. 1, p. 222; who cites Stith's Hist. p. 197.

§ Thus in the schedule of goods seized, belonging to Clayborne, on Palmer's

CHAP. I. This traffic with the Indians within the province appears to
 1633. have been thought of so much importance, (probably with a view of checking the unlawful intercourse with them still kept by Clayborne and his party,) as to induce the appointment, from time to time, of agents or superintendants thereof accordingly, commissions appear to have issued to different persons at different times in this year, authorizing them to take all persons with their vessels and property, who shall be found transgressing in that respect.*

Their
coasting
trade.

Some *coasting* trade also by sea appears to have now existed with the Maryland colonists in a small degree, especially with the Dutch on Hudson's river; for we find in our records, licenses (similar to that before mentioned, granted by the governor of Virginia to William Clayborne,) "to trade and commerce *with the Dutchmen in Hudson's river*, or with any Indians or *other people whatsoever* being or inhabiting to the northward without the capes commonly called Cape Henry and Cape Charles."†

Their
trade to
Europe.

In imitation of her elder sister, the Virginia colony, Maryland appears to have adopted the cultivation and consequent exportation of *tobacco*, from her earliest settlement; at least, we may suppose the colonists of Maryland to have commenced the growth of this plant, as soon as cleared grounds for the purpose could be spared from the necessary culture of Indian corn. For, we find in the list of the bills passed or drawn up, at the session of assembly last mentioned, one entitled, "A bill for ordering the payment of tobacco."‡ This article of the produce of the lands had now become, as it had before this in Virginia, the current medium of trade among the colonists themselves, as well as the means by exportation, of buying in the mother country such necessaries and conveniences as their situation might dictate. The purport of this bill was, therefore, as we may conjecture, since we have no record or copy of it, to ascertain the *price* at which tobacco should be rated per pound, and re-

island, (as before mentioned,) were—"six *yards* of *Peake*, and one yard and a half of *Roenoke*."—Also, the emperor Powhatan, when he was applied to, in the year 1614, for his second daughter to be given in marriage to one of the colonists, replied,—"that he had sold her, a few days before, to a great Wero-wance, for two *bushels* of *Roenoke*." Burk's Hist. Virg. vol. 1, p. 174.—See a further explanation of *Peake* and *Roenoke* in note (XVI.) at the end of this volume.

* See note (XVII.) at the end of this volume.

† See note (XVIII.) at the end of this volume.

‡ See the list of bills in Bacon's Laws, of the first session noticed by him.

ceived in payment of debts, or in the purchase of goods, or articles of commerce. A similar regulation of this staple of trade and medium of commerce had been adopted in Virginia, in the year 1618, under an edict or law enacted by governor Argall;—"That all goods," (goods *imported* we may presume,) "should be sold at twenty-five per cent., and tobacco allowed for at *three shillings* per pound, and not under, nor over, on the penalty of three years slavery to the colony."* Whether at this early period of the Virginia colony, there was a difference of exchange between Virginia and England, or whether the sum just mentioned meant three shillings sterling or not, is not explained in the edict. But, as it is said,† that Virginia tobacco sold in England about that time for "three shillings," we may infer, that the "three shillings per pound," above mentioned, was money accounted at its sterling value.‡ As no copy or record remains of the proposed Maryland bill, before mentioned, we have no sufficient grounds to ascertain the price of tobacco thereby regulated. We may suppose it to have been the same, or nearly so, with that of Virginia; for, it seems, that the Maryland colonists were in the habit, at this time, of exporting a part of the tobacco made by them to Virginia, and not the whole of it directly to England, as will appear from a law enacted at the next session in 1638-9. We are to suppose too, that the several regulations, resulting from the several proclamations of

CHAP. I.
1638.

* Burk's Hist. of Virg. vol. 1, p. 194; who cites Stith's Hist. p. 147; see also Chalmers's Annals, p. 38.—However proper it might have been to check the impositions practised upon the planters by the importers and retailers of goods, yet the obvious disproportion between the crime and the penalty, not only in this instance but in others of the same date, might well acquire to governor Argall the character of a "tyrant," in whom, it seems, the supreme authority in Virginia, both executive and legislative, was at this time vested. The expression,—"*slavery to the colony*," meant a servitude for years on some one of the plantations, which were then cultivated, under the directions of overseers or agents, at the expense and for the benefit of the *Virginia Company* in England, to whom the province, being then proprietary, belonged by virtue of their several charters before their dissolution.

† Burk's Hist. of Virg. vol. 1, p. 207.

‡ Chalmers observes, (Annals, p. 46,) that when the importation of young girls into Virginia took place, in the year 1620, for wives for the planters.—"the price of a wife to the husband, who purchased her, was *one hundred pounds of tobacco*, for each of which" (pounds of tobacco,) "there was then allowed, in money, *three shillings*." From whence it may be inferred, that, as tobacco sold in England for *three shillings*, and the price of it in Virginia also was rated at *three shillings*, there was, at this period of time, little or no difference between *currency* and *sterling*.

CHAP. I. both king James and his son Charles, relative to the importation
1633. of tobacco from Virginia and Bermudas into England, were now deemed to be applicable and in force as to the importation of that article from Maryland. These proclamations, however exceptionable in some of their regulations, were founded upon a principle long pursued by the mother country, and which is certainly bottomed upon the best colonial policy, that is, of excluding the importation of any particular commodity from any foreign country, when the same commodity can be imported from the colonies. Hence, as Spanish tobacco was in greater demand in England than that of Virginia, on account of its supposed superior flavour, and would, when for sale, command a higher price, James, notwithstanding his invincible aversion to that noxious weed in all its shapes, and his ardent endeavours joined to those of the old Virginia company, to persuade the colonists of Virginia to adopt some other staple, particularly silk, yet, in order to favour his colonies, permitted the importation of tobacco from Virginia and Bermudas, and prohibited it altogether from Spain or her colonies, and at the same time prohibited the cultivation of it in England. Some regulations, however, relative to the imposition of *customs* or *duties* upon the importation of tobacco into England from the colonies, being deemed by the Virginia Company injurious to their interests, and consequently perhaps to the planters, they established warehouses and appointed factors in Holland, and sent all their tobacco there, so that in the year 1621, no tobacco whatever was imported into England from Virginia. But this being found contrary to another colonial principle, perhaps equally just as the former, that the mother country was entitled to the exclusive benefit of the trade of the colonies, it was soon prohibited. This prohibition was by an order of the king in council, issued in October, 1621, commanding that "no tobacco, or other productions of the colonies shall thenceforth be carried into foreign parts, till they are first landed in England, and the custom paid:" assigning these remarkable reasons; "that the king, weighing the great advantage, which this crown and estate might receive from a well ordered plantation in Virginia, granted several immunities to the colonies, as not doubting but that they would apply themselves to such courses as might most firmly incorporate that plantation into his commonwealth; that to suffer, therefore, a foreign trade, is as inconsistent with the view in the planting of Virginia, as

with just policy or the honour of the state.”* But this order, CHAP. I.
1638. it is said, was disregarded or eluded; for tobacco continued to be sent to Holland from both Virginia and the Somers isles; which occasioned the prohibition or order to be renewed in the following March, 1622. By this last order the governor and colonists were required to prevent the like practices in future, and also to procure the return of those ships, which had been lately sent to foreign parts, “upon those penalties that the contemners of the authority of the board may expect.” The colonial officers were commanded to publish this order in their several courts, “and to look that it be executed.” And it was transmitted to Virginia for the information of the people, that they might know how to comfort themselves therein. It may be inferred, however, from some proceedings of the next Maryland assembly, that the exportation of tobacco from the colonies to foreign countries was still, secretly perhaps, carried on.—The salutary colonial principle, first above mentioned, of prohibiting the importation of foreign tobacco into England, appears to have been adopted by James at the instance of the house of commons, and he deserves no other credit for it, than that of yielding, for once, to the wholesome advice of the representatives of his people.†

His son and successor Charles, soon after his accession, renewed by proclamation the several regulations of his father on this subject;‡ and subsequently issued several other inconsistent proclamations in further regulation thereof.§ One in August, 1627, deserves notice; it commanded, “that no tobacco shall be planted in England or Ireland, and that justices of the peace and constables shall pluck it up;|| that all imported from the colonies shall be delivered to the king’s commissioners, at a

* Chalmers’s Annals, p. 53, who cites Virg. Entr. 1 vol. p. 201, in the Plantation office.

† For the several regulations of tobacco by proclamation and otherwise, in the reign of James; see Hazard’s Collections, vol. 1, p. 49, 89, 93, 198, 224; and Chalmers’s Annals, p. 47, 50, 53, 64, 67, 70.

‡ See Hazard’s Collections, vol. 1, p. 202.

§ See the substance of them stated in Chalmers’s Annals, p. 129.

|| King James had, by proclamation dated December 30th, 1619, made the like prohibition nearly in the same words; which induced Sir Edward Coke, in a debate on public grievances in the session of parliament of 1621, to observe, “that never, till within these forty years, was there any restraint made, other than by act of parliament, that a subject, being a freeholder, shall not plant what he list in his own ground.” Chalmers’s Annals, p. 49. See this proclamation of 1619 stated in that of 1620, in Hazard’s Collections, vol. 1, p. 93.

CHAP. I. price to be agreed on, of whom every one shall buy it; and that
 1638. for the prevention of frauds, no foreign tobacco shall be imported from the colonies.”* Although Virginia and Bermuda only are particularly mentioned in most of these proclamations, yet, as the regulations prescribed by them seem to have been intended to operate on the importation of tobacco from all the British colonies, which then grew that article, it may be inferred, that so soon as Maryland began to cultivate and export that article, it would then become subject to the same regulations in that branch of commerce as the other colonies. However, we find one other regulation relative to this subject, which took place after the settlement of the Maryland colony, and in which there are some expressions appearing to have been intentionally inserted therein, in order to include that colony. The commission to Sir William Russell and others, bearing date, June 19, 1635, after stating the hardships and oppression, which the colonists residing “upon our *English plantations* suffered by the secret and indirect trade of particular merchants and shopkeepers, who make a prey of them and their labours, by supplying their necessities with commodities at unreasonable rates; which unconscionable course of the said merchants and shopkeepers had been so grievous to the planters, that they had been forced, not only to petition for an abatement of the customs and imports, but to send the most part of their tobacco to foreign parts;” and after stating the royal resolution, “to have hereafter *the sole preemption* of the said tobacco upon the said plantations, and that at such rates and prices as should be found fit;” authorises the commissioners therein named, “to call before them all *persons having any interest* in the plantations of Virginia, Bermudas, the Caribe Islands, or *any other of our English colonies*, and require them to declare their several interests,†—what quantities of tobacco they have upon their several plantations, what they expect upon their returns, and when they shall have the same;

* Chalmers’s Annals, p. 118; who cites Rymer’s Fœd. vol. 18, p. 920 —The king had in the preceding February, (1627, N. S.) issued a proclamation, allowing the importation of 50,000lb. of *foreign* tobacco, observing therein, as his motives thereto, that the desire of taking tobacco still increased, notwithstanding every opposition,—that his subjects preferred the Spanish tobacco, and that *he was willing to give way to the infirmities of his people.* Ibid. p. 129.

† It would seem, from the tenor of this commission, that “the persons having interests,” &c. were such persons as resided in England, and had property or debts in the above mentioned colonies; and the words—“any other English colonies,” would include Maryland, though not specially named.

and, in the name of the king, to treat and contract with them CHAP. I.
1638. for their several quantities ; and to assure the planters and owners themselves upon the said plantations, that a commission will be sent into every of the said plantations to treat and conclude with them a contract for their tobacco.”*—It must be confessed, that however inconsistent such a commission was with even the then known principles of both the laws and constitution of England, yet, had it been executed with fidelity, and liberal prices allowed to the planters for their tobacco, it would have operated as well for their benefit as for that of the monarch. If any thing could justify such an arbitrary proceeding as this royal monopoly, a slight recollection of the gross frauds and abuses which have been since long practised by many of the British merchants, to whom Virginia and Maryland planters had consigned their tobacco for sale, would tend much to reconcile the adoption of any measure, however tyrannical, which could bring such men to a sense of justice. Whoever has seen an “account of sales” of tobacco, sent by a London merchant to an humble planter in Maryland prior to the revolution, and perhaps indeed since, has very probably seen a commentary strongly illustrative and explanatory of the oppressions rehearsed in the foregoing commission. What operation the execution of this commission had in the colonies, whether pernicious or beneficial, we are not informed. As Charles’s prerogative was now far in the wain, it is not improbable, but that the commission died a natural death, and shortly became a dead letter.

An incident occurred this year among the colonists, which deserves some attention, inasmuch as it exhibits the state of religion as it then existed among them ; from which it appears, The state
of religion
among the
colonists. that although the greater number of the colonists are said to have been of the catholic religion, yet some few protestants, most of them probably of the inferior class, had also either first emigrated with the catholics, or had crept in among them from Virginia or some of the other colonies. A proclamation had been issued by the governor of Maryland, (but *when*, we are not informed, nor does such proclamation appear at large upon record,) to prohibit “all unseasonable disputations in point of religion, tending to the disturbance of the public peace and quiet of the colony, and to *the opening of faction in religion*.”—Capt. Cornwaleys, it seems, had some servants, who were of the pro-

* See this commission at large in note (XIX.) at the end of this volume.

CHAP. I. testant religion. They lived or lodged in the same house with
1638. a certain William Lewis, who appears to have been a zealous papist, and under whose charge and government these servants were. It happened, that Francis Gray and Robert Sedgrave, two of these protestant servants of Capt. Cornwaleys, were reading "Mr. Smith's Sermons," a protestant work. While they were reading the book aloud, William Lewis came into the room, and supposing that they read it aloud for him to hear, particularly some offensive passages in it, as—"that the pope was anti-christ, and the jesuits anti-christian ministers," &c. he told them, "that it was a falsehood, and came from the devil, as all lies did, and that he that writ it was an instrument of the devil, and he would prove it; and that all protestant ministers were the ministers of the devil," and forbade them from reading that book any more. Whether these servants obeyed him on this occasion, or not, does not appear; but the conduct of Lewis, it seems, excited in them so much discontent, as to induce them to prepare a petition, intended, as afterwards alleged by William Lewis, to be presented by them to Sir John Harvey, governor of Virginia, as soon as they had procured the signatures to it of all the protestants in Maryland, the governor of Virginia being a protestant, and the church of England the prevailing religion there. The servants denied this intention, but acknowledged that the petition was to have been presented to the governor and council of Maryland. The purport of the petition was, to complain against William Lewis for his abuse of protestant ministers, and his refusal to permit them either to keep or read, in his house, any book which appertained to their religion. But before they had an opportunity of either procuring the signatures of the protestants or presenting the petition, William Lewis (on the first of July, 1638,) gave information thereof to Capt. Cornwaleys, who, immediately calling in Mr. Secretary Lewger to his assistance, ordered the several parties, together with the witnesses, to be brought before them. The petition was delivered up to the captain, and after an examination of the parties, they were bound in a recognizance with two sureties to answer the matter at the next court. The *court*, (composed, as it appears, of the governor, capt. Cornwaleys, and Mr. Secretary Lewger,) meeting on the third of July, the sheriff was commanded by warrant from the governor, to bring William Lewis, Robert Sedgrave, Francis Gray, Christopher Carnoll, and Ellis Beach,

before the court. After an examination of the parties and one witness, (a protestant,) the governor thought it proper, on account of the absence of another material witness to defer the trial and "censure" of the servants, till the witness could be produced in court; but desired the secretary to deliver his "censure"* touching the complaint against William Lewis.

CHAP. I.
1638.

The secretary gave it as his opinion, that for his (Lewis's) "offensive speeches and unseasonable disputations in point of religion, contrary to a public proclamation to prohibit all such disputes," he (William Lewis,) should be fined 500lb. tobacco, and remain in the sheriff's custody until he found sufficient sureties for his good behaviour in time to come. Capt. Cornwaleys was for the fine, but not for binding him to his good behaviour. But the governor concurred wholly in the sentence of the secretary. And so the court broke up, and William Lewis was committed to the custody of the sheriff; but he afterwards found security for the peace. What was the event of the accusation against the servants, our records do not inform us. If the charge was true, that they intended to prefer their petition to the governor of Virginia, it is certain, that such conduct wore very much the aspect of the *political* crime, called sedition.†

As these proceedings took place before the highest tribunal of the province, composed of the three first officers in the government, they amply develope the course of conduct, with respect to religion, which those, in whose hands the government of the province was placed, had resolved to pursue. Whatever

* The word "censure" means here,—the speech of the judge in giving his judgment in any criminal case. It was a word used in that sense about this time, as will be seen in the laws of the next session of the assembly.

It occurs frequently in Shakspeare's Plays; as for instance in Measure for Measure, (Act 1, scene v.)

"*Joab.* Doth he so seek his life?

Lucio. Has censur'd him

Already; and, as I hear, the provost hath

A warrant for his execution."—

So, in Othello:

"—— to you, lord governor

Remains the *censure* of this hellish villain."

So in the Winter's Tale,

"How blest am I,

In my just censure! in my true opinion!"

Mr. *Malone*, in his annotation on this last passage remarks,—"*Censure*, in the time of our author, was generally used (as in this instance,) for judgment, opinion."

† See a full copy of the *record* of the proceedings in this case, in note (XX.) at the end of this volume.

CHAP. I. opinion the reader may entertain of the equity and justice of the foregoing decision, (which, considering all the circumstances attending the settlement of the colony, seems to bear rather hard upon the catholics,) he will readily acknowledge an impartiality of conduct therein, (perhaps, a sacrifice of personal feeling,) which reflects much honour on the governor and his associates on this occasion. When we compare such proceedings with those of the times of queen Mary, we can scarcely believe, that our colonists were of the same sect of christians as those who ruled in England. The oppressions, however, which their sect had since experienced in that country, had probably by this time taught them a lesson of toleration, which they were now anxious, as soon as occasion offered, to exhibit as an example to others. As the puritans, their most inveterate enemy, were now gaining in a rapid manner the ascendancy of power in the councils of the mother country, our colonists, with a prudent policy, cautiously checked even the least sentiment, that might be thought to indicate a wish to revive in this remote wilderness of America the ancient severities of their church.

The nature of the administration of justice in the province.

This judicial exercise of power by the governor and council leads us to a short inquiry into the nature of the administration of justice, as it existed at this early period of time in our infant colony, prior to those legislative arrangements in that respect, which will next in order claim our attention. It will be recollected, that by the *ordinance*, (or commission,) of the lord proprietary, bearing date the 15th of April, 1637, before mentioned,* he constituted his brother Leonard Calvert, not only "lieutenant-general, admiral, chief captain and commander as well by sea as land of his province of Maryland," but also, "his chancellor, chief justice, and chief magistrate within his said province, until he or his heirs should signify the contrary under his hand and seal; and gave him power also, "to appoint and constitute from time to time officers and ministers for the preservation of the peace, administration and execution of justice;" and granted him also "full power and authority to inquire and determine and finally to judge of and upon all causes *criminal* whatsoever, (excepting only where the life or member of any person shall or may be inquired of or determined,) and to award execution upon every such sentence or judgement; and also to hear and determine all *civil* causes whatsoever, concerning any goods, chat-

* See note (VI.) before referred to, at the end of this volume.

tels, contracts, debts, demands, or other personal or mixt actions CHAP. I.
 both in law and equity, in the most summary and equal way that 1638.
 he may, according to the orders, laws, and statutes of that our
 said province already made and established or hereafter to be
 made or established, and in default of such laws established or
 to be established within our said province, then according to the
 laws and statutes of the realm of England or as near as he may
 or can determine thereof; and where the *life, member, or free-*
hold of any person or persons shall happen to come into ques-
 tion within our said province, we do hereby give and grant to
 him our said lieutenant *and to such persons* as we shall from time
 to time by our letters or any other warrant under our hand and
 seal nominate and appoint to be *of our council* within the said
 province, or to any three of them, whereof our said lieutenant al-
 ways to be one, full power and authority to inquire and determine
 thereof according to the laws of our said province established
 or to be established, and finally to give sentence and judgment
 thereupon, and to award execution accordingly." By a clause
 in this ordinance also, immediately preceding the grant of the
 before mentioned judicial powers to the lieutenant-general, the
 appointment of a council was thus expressed:—"And *for the bet-*
ter assistance of him our lieutenant in the execution of the pre-
 mises and *of the charge by us committed to him*, we have appointed
 and ordained, and by these presents do appoint and ordain our
 well beloved Jerome Hawley, esqr., Thomas Cornwaleys, esqr.,
 and John Lewger, gent., to be of our council of and within our
 said province, *with whom our said lieutenant shall from time to*
time advise, as he shall see cause, upon all occasions concerning
 the good of our said province, and of the people there."

From this part of the governor's commission, it appears, that
 he was created *sole* judge of the supreme court of justice of the
 province in most cases, either *criminal* or *civil*, that could arise
 within the province; with this exception in *civil* cases, that
 where the *freehold* of any person came in question, he was to call
 in to his assistance any two at least of his council; and so in
 like manner in *criminal* cases where the *life* or *member* of any
 person should come in question. It is probable, however, that
 the governor, as he was directed by the preceding clause,—“to
 advise with his council from time to time, as he should see cause,
upon all occasions concerning the good of the province,” usually
 called in to his assistance, when holding his court, some of his

CHAP. I. councillors, on other occasions than where he was expressly so

1639. required to do; of which the proceedings in *Lewis's* case, just before stated, seem to afford an example. As the whole province, exclusive of the isle of Kent, consisted, at this period of time, only of one county, called St. Mary's county, which, (although no actual limits were as yet assigned to it,) had been organized for the purposes of the preservation of the peace by the appointment of justices of the peace and constables of hundreds therein, it appears, that the governor and council retained within their jurisdiction, whilst sitting as judges of the supreme court of the province, all the powers and duties which were subsequently vested in any one county court. The small number of suits or actions, which could possibly arise in a population of about three hundred persons at the most, seems to justify this reservation of power by the governor.* It may here be observed also, that as we do not discover in our records, any commission or act of assembly, made expressly for the erection of the supreme court of the province, subsequently, and perhaps at this time, called "the provincial court," this supreme court, composed of the governor and council, acquired by *common usage* the appellation of "the provincial court,"—possessing *original* jurisdiction in all cases arising within the province, except where the special jurisdiction given to the court on the isle of Kent precluded but an *appellate* jurisdiction even from that court.

As a small population of Virginians had taken place on the isle of Kent, prior to the arrival of the Maryland colony, who were in time reduced by force to the lord Baltimore's jurisdiction, and that territory being at some distance from the seat of government at St. Mary's, it became necessary to make a distinct provision for the administration of justice in that portion of the province. This was done, as we have before seen, by a commission to captain George Evelyn, bearing date the 30th of December, 1637, "giving him power to call a court or courts, and in the said courts to hold pleas in *civil* cases not exceeding £10 sterling, and jurisdiction in *criminal* cases over all offences, which may be heard by justices of peace in their sessions in

* In analogy to this it appears, that until the year 1622, the governor and council in Virginia formed the only court of justice in that province, and all cases and suits were heard and determined by them as judges. Inferior courts in the nature of quarter sessions of England, were first instituted in that province by their assembly of that year, and called *county courts*. See *Beverley's Hist. of Virg. B. I. sect. 45.* *Keith's Hist. of Virg. p. 136,* and *Burk's Hist of Virg. vol. 1, p. 228, 231.*

England, not extending to life or member.”* In a little more CHAP. I.
 than a month afterwards, however, on the 9th of February, 1637, 1638.
 (1638, N. S.) we perceive the commission to certain gentlemen,
 as before mentioned, “to be justices of peace within the said
 island, to hold a *court-leet* in all *civil* actions not exceeding
 1200 *lbs.* tobacco, and to hear and determine all offences *crimi-*
nal within the said island, which may be determined by any jus-
 tice of the peace in England, not extending to the loss of life
 or member.”† But it appears, that subsequently, towards the
 latter end of the year 1638, this commission for a *court-leet* on
 the isle of Kent was superseded by the following commission,
 vesting both the *civil* and *criminal* jurisdiction of the island in
 the *commander* thereof. This last mentioned commission was
 issued on the 22d of April, 1638, to William Brainthwayte, ap-
 pointing him “commander of the isle of Kent in all matters of
 warfare by sea and land necessary to the resistance of the enemy
 or suppression of mutinies and insolencies;‡ and, in all matters
civil and *criminal* to use and exercise all or any jurisdiction and
 authority for the administration of justice and conservation of
 our peace within the said island as any justice of peace in En-
 gland may or ought to use and exercise by virtue of his com-
 mission for the peace, and further (as there shall be cause,) to
 hold a court or courts, and in the said courts to award process,
 hold pleas, and to hear and finally determine all actions and
 causes whatsoever *civil* happening and arising between any the
 inhabitants of the said island not exceeding in damages or de-
 mands to the value of *one thousand weight of tobacco*, as also to
 hear and finally determine all misdemeanors and offences what-
 soever *criminal* happening or committed within the said island,
 and to award execution thereupon, so that the said crimes extend-
 ed not to the questioning of any one for his life or member, and
 all matters and causes whatsoever aforesaid to hear and deter-
 mine in the most summary or equal way that he may§ according

* See this commission stated more at large before, in p. 43, 44.

† See before, p. 39, note.—Immediately following this commission, as it is on
 our records, there is subjoined the following note:—“Commission of sheriff and
 coroner of the same island to John Langford, *ut supra*.”

‡ This commission omits the clause, which was in that to captain Evelyn of
 the 30th of December, 1637,—“authorising him to elect and choose six of the
 inhabitants of Kent for his council.”—Perhaps for reasons which will appear in
 the next commission to Mr. Brainthwayte, it was supposed by the governor, that
 a greater latitude of trust might be reposed in him than in Evelyn.

§ This expression—“summary or equal way,” (which is also in the commis-
 sion to the governor, of the 15th of April, 1637, just before cited,) seems to have

CHAP. I. to the laws of this province* established or to be established,
 1638. (after publication thereof in the said island,) and in default thereof then according to the laws of England† as near as he shall be able to judge; and further to elect and appoint all necessary officers for the execution of justice and of the authority hereby committed unto him, with allowance of such reasonable fees as are usually belonging to such officers."

Notwithstanding the establishment of these judiciary tribunals on the isle of Kent, yet it evidently appears, from *the limitation of their powers*, that the court of St. Mary's, composed of the governor and council, by virtue of the before mentioned ordinance, would be considered as the *supreme* court of the province, and might properly be called "the provincial court," (as it afterwards was,) retaining *original* jurisdiction in all *civil* cases arising even on the isle of Kent, (that island "being of right a member of the province," as the before mentioned commission to Evelyn expresses it,) which should exceed 1000 lbs. tobacco, and in all *criminal* cases arising there also, where the punishment of the crime might extend to life or member; and, as we may presume, an *appellate* jurisdiction in all *civil* cases cognizable in the court of the isle of Kent. But, for some reasons not expressed in the records, this *appellate* jurisdiction seems to have been taken away by a subsequent commission to William Brainthwayte, bearing date the 21st of December, 1638, confirming the powers before granted to him, and further amplifying and enlarging them,‡ and moreover giving to him this

authorised *summary proceedings*, (contrary to the common law,) to be used in the courts of justice. It is certain, that in some of the county courts, on their first establishment, (particularly in Talbot county court, among its first proceedings between the years 1663 and 1670,) it was the practice for a plaintiff in a *civil* case for debt to proceed in the first instance by way of *petition* and *subpœna*, instead of a *writ* and *declaration*.

* This expression, wherever it occurs in our records almost invariably means, *acts of assembly* of this province, in contradistinction to the *common* and *statute* laws of England, which, strictly speaking, were [also laws of this province, except perhaps in *criminal* cases extending to the loss of life or member.

† This proviso—"in default of the laws of the province, then according to the laws of England,"—pervades most of the early *judicial* commissions of the province, introduced most probably in pursuance of the seventh section of the charter, which concludes—"so nevertheless, that the laws aforesaid," (to wit, the acts of assembly,) "be consonant to reason, and be not repugnant or contrary, but (so far as conveniently may be,) agreeable to the laws, statutes, customs, and rights of this our kingdom of England."

‡ In this second commission it is expressed, by way of preamble,—“Whereas by our commission, &c. we did appoint *our dear kinsman*, William Brainthwayte,

second commission—"full power and authority by a precept CHAP. I.
1638.
under his hand to summon or warn any person being within our said island to answer to any matter or suit, *civil* or *criminal*, and to hear and determine all suits of debts of what value or demand soever the same shall be, and if any person shall be convicted of any debt either to ourself* or any other by the confession and acknowledgment of the party himself, or by the verdict of such as shall try the matter, to avoid execution for all such several sums by a precept under the hand of the said William Brainthwayte, which precept, we do hereby appoint, shall be a sufficient warrant to the sheriff of our island to levy the said several sums contained in the precept of execution either by distress and sale of the goods of the party against whom the execution shall be awarded, or otherwise by imprisonment of his person as the said precept shall direct."†

A few remarks may be here added, in particular reference to the administration of justice in St. Mary's. Although Mr. Lewger was one of the council, as well as secretary of the province, yet for the further organization of the county of St. Mary's, the governor, early in the year 1638, (January 24th, 1637, old style,) issued a commission, wherein he appointed him "conservator of the peace within the county of St. Mary's, with such powers as are usually exercised and executed by any justice of peace in England;" and in the same commission appointed him also—"commissioner in causes testamentary to prove the last wills and testaments of persons deceased, and to grant letters of administration." It is probable, that the bill entitled, "a bill for the probate of wills," passed at the session of assembly before mentioned, begun and held on the 25th of January, 1637, (1638, N. S.) the day after the date of the above commission, was intended to make further provision relative to the above mentioned office of commissioner, (or commissary) "in causes testamentary." It would appear, however, that the governor and council, subsequently to the commission, acted as

gentleman, to be *commander*, &c."—From whence, supposing him to be a near relation of lord Baltimore, we may infer, that the almost unlimited power, about to be vested in him by this commission, was more readily granted, and it will probably account also for the omission of appointing a council for him as was done in that to captain Evelyn, as before mentioned.

* That is, of debts to the lord proprietary, in whose name the commission runs.

† See these two last mentioned commissions to William Brainthwayte, in the "Council Proceedings from 1636 to 1657," pp. 32 and 33.

CHAP. 1. an ecclesiastical court, by granting letters testamentary on last
 1638. wills in several cases;* but it is possible, that Mr. Lewger's commission might be intended to create him only a *ministerial* officer, as a deputy-commissary was, prior to our revolution, while the *judicial* cognizance of testamentary causes, in controverted cases, might still remain in the highest tribunal,—the governor and council.

These appear to be the first proceedings, now extant on our records, in the regular arrangement of courts and officers for the administration of justice in those two distinct parts of the province, which had been as yet settled by Europeans. The paucity of inhabitants, and consequently of suits or actions at law, will possibly reconcile, what at first appearance strikes us at this day as too large a monopoly or reservation of *judicial* power in the hands of the chief executive magistrate. But, in justice to the memory of those, in whom the supreme power of the province, both executive and judicial, had been hitherto vested, from the first landing of the colony in March, 1634, to the close of the year 1638, a period of almost five years, it ought to be remarked, that it would be difficult to find on our records a single instance of an arbitrary or wanton exercise of such power on either the persons or property of any one individual.

* See, in the "Council Proceedings, from 1637 to 1644,"—Letters testamentary on the last will and testament of Mr. John Saunders, granted by the court, (the governor and council,) to Thomas Cornwaleys, esq. on the 12th February, 1637, (1638, N. S.) and in another instance on William Smith's estate. This appears to be the same court as that before which the bills of indictment were found against William Clayborne and Thomas Smith, and which is there called a county court, held before the lieutenant-general, captain Robert Wintour, and Mr. John Lewger. A Mr. Jerome Hawley appears to have been a man held in high estimation in the province, at its first settlement, having been always the first named of the council; it may be proper here to mention his death, which happened about midsummer in the year 1638. In the same record-book, just mentioned, there is a memorandum made of the granting administration on Mr. Jerome Hawley's estate to captain Cornwaleys, August 2d, 1638. From which book it also appears, that he left a widow, but no children.

CHAPTER II.

Lord Baltimore assents to the right of the assembly to originate laws—An assembly of the province called—Their proceedings—The constitutional act for establishing the house of assembly—The house sit as a court of justice, and adjudge several cases civil and criminal—The general act, ordaining certain laws for the government, to wit, for securing the rights of holy church—for prescribing an oath of allegiance to his majesty—for securing the rights and prerogatives of the lord proprietary—for securing the rights and liberties of the people—for the better administration of justice and conservation of the peace—Some particular laws for the punishment of crimes—as for treasons, felonies, and enormous offences—Laws for erecting courts of justice—A court of admiralty—County courts—Court of chancery—A pretorial court—The authority and jurisdiction of justices of peace—the particular offences under their cognizance—Inferior executive officers—The administration of justice in the isle of Kent more particularly regulated—Oaths of office prescribed—Officers for the probate of wills and granting administration—Military discipline—Payment of officers' fees and public charges provided for—Derelict property, directions concerning it—A short insolvent law—The planting of tobacco and Indian corn regulated—Weights and measures—Customs or duties on the exportation of tobacco—The constitution of the general assembly more specially provided for—The duration of commissions in case of the death of the lord proprietary—A water mill and a town house the building of them directed—Other bills of this session not recognised in the general act, as—the act for descending of lands—for assuring of titles to land—for enrolling of grants—Also, for peopling of the province, and for limiting the times of servants.

Although it was not expressly prescribed by the charter of CHAP. II. Maryland, that the colonists under it should be entitled after 1639. their emigration to the benefits and protection of the *common law* of England, or that that system of jurisprudence should be the code by which they were to be governed, yet the clauses at the end of the seventh and eighth sections of that instrument of grant seem to imply strong inferences, that such colonists should be so entitled, or were to be so governed. Indeed, the common law principle, that the English laws were the birth right of every English subject, necessarily drew the inference,—“that such colonists would carry with them so much of the English law, as was applicable to their own situation and the condition of an infant colony.”* This seems to have been the practical construction of the charter in the colony of Maryland from the time of its first emigration to the declaration of its independence.

* 1 Bl. Com. 107.

CHAP. II. Hence, therefore, in the "declaration of rights" prefixed to their
 1689. new constitution, after that event, they declared—"That the inhabitants of Maryland are entitled to the "common law of England, and to the benefit of such of the English statutes as existed at the time of their first emigration."

Agreeably to these principles it will appear from the events detailed in the foregoing chapter, that, notwithstanding the *disassent* of the lord proprietary to the laws enacted by the two preceding provincial assemblies, and the *rejection* also, by the last assembly, of the laws framed and sent in by the lord proprietary himself, and notwithstanding some doubt seems to have been expressed by some of the members of the last assembly with respect to the adoption of the laws of England for their government, yet the whole of their proceedings, both legislative and judicial, were evidently predicated and founded upon the English system of jurisprudence. But it will be obvious, upon the least reflection, that the situation of this infant colony in Maryland necessarily demanded many local regulations, peculiarly adapted to their own circumstances, and not provided for by the municipal code of the mother country.—The lord proprietary, it seems, saw this in its proper point of view; and, with a noble generosity, which does lasting honour to his memory, overlooked the indignity offered to him by the rejection of the laws proposed by him, and yielded to the freemen of the province themselves, the right of propounding the laws to be enacted. For this purpose the following letter, (or commission,) was sent by him from England to his brother the governor.

Lord Baltimore assents to the right of the assembly to originate laws.

"DEAR BROTHER,—I do hereby give you full power and authority from time to time in every general assembly summoned by you in the province of Maryland, in my name to give assent unto such laws as you shall think fit and necessary for the good government of the said province of Maryland, and which shall be consented unto and approved of by the freemen of that province or the major part of them, or their deputies assembled by you there from time to time for the enacting of laws within that province; Provided that the said laws, so to be assented unto, be, as near as conveniently may be, agreeable and not contrary to the laws of England; every which law, so to be assented unto by you in my name, and consented unto and approved of by the freemen aforesaid, I do hereby declare shall be in force within the said province, till I or my heirs shall signify mine or

their disassent thereto, under the great seal of the said province, and no longer, unless, after the transmission thereof unto us, and due consideration had thereupon, I or my heirs shall think fit to confirm the same. Given under my hand and seal at London in the realm of England, the 21st of August, 1638. CHAP. II.
1639.

C. BALTIMORE.*

To my dear brother Mr. LEONARD CALVERT esq.

my lieutenant general of the province of Maryland."

Although this letter does not in *express words* conceded to every member of the assembly a right of propounding any law, which he may deem proper to be passed by the house, yet the expressions therein, which authorise the governor "to *give assent* unto such laws as he should think fit and necessary," strongly imply, that laws might be proposed in the house by other persons than the governor himself. It is probable, indeed, that the practice was, during many of the first sessions of assembly next after the first settlement of the colony, for the secretary of the province, who appears to have been always a member of the house, to make draughts of and bring in, all such bills, as should be thought "fit and necessary," he being, perhaps, the best lawyer and most capable of such a task. It is evident, however, from the practice of the last session before mentioned, where bills had been brought into the house by a committee specially appointed for that purpose, as we have before seen, that the members of the house were fully aware of this their right; and might occasionally have exercised it, although it does not appear upon the journal of the next session, that any such committee was during that session appointed.

The constitutional principles, therefore, acceded to by the lord proprietary and established by this letter, seem to have been, that the freemen in assembly met might originate and pass "such laws as they should think fit and necessary for the good government of the said province," subject to the *assent* or *disassent* of the *governor* in the name of the lord proprietary, and subject also to the constitutional proviso of the charter, "that the said laws be, as near as conveniently may be, agreeable and not contrary to the laws of England;" but at the same time if the lord proprietary should subsequently disassent to any such laws, that they should then cease to be considered as laws, and no longer binding on the inhabitants of the province; that is, that laws

* See "Assembly Proceedings from 1637 to 1658," p. 36.

CHAP. II. passed by the house of assembly and receiving the governor's
 1689. assent should be deemed and acted under as laws, until the lord
 proprietary signified his disassent thereto.

However inconvenient it might be, that the lord proprietary, when resident at so great a distance from his province, should reserve to himself a final negative upon the laws proposed to be passed, yet it will be acknowledged, that the right hereby acquired by the freemen of the province of originating such laws for themselves, as they should think fit, was a most important corner-stone in the foundation of their provincial liberties. This judicious concession of lord Cecilius might well be considered as an earnest of those repeated acts of generosity, which subsequently acquired to him the appellation of—"the father of his province." Fortunate had it been, indeed, for his sovereign, could he have copied from his noble subject so excellent an example of prudent caution in yielding in time even what he deemed to be his just right and prerogative; and fortunate also, we may say, would it have been, if not for Americans at least for the English nation, had the present monarch of that throne exercised equal wisdom and moderation in retracting in due season measures manifestly obnoxious to his American people.

An assembly of the province called.

In pursuance of the foregoing authority from the lord proprietary, and under the influence of the urgent necessity of the measure, the governor immediately formed the resolution of calling an assembly of the province. As the isle of Kent was the most distant part of the province then inhabited, it became necessary to give a more early intimation thereof to the inhabitants there settled. The governor accordingly issued his writ to the commander of that island for the purpose of causing "deputies or burgesses" to be chosen to represent that district. But, as the proceedings in relation to and during the holding of this assembly about to be convened, exhibit the establishment of constitutional principles, which pervaded the provincial form of government during its existence, it is deemed to be proper to insert them here more in detail than would otherwise be necessary or admissible. The documents appertaining thereto could not be condensed by abridgment into much less space, than they originally occupy. The writ of election to the isle of Kent is as follows:

"After my hearty commendations, &c., Whereas I have appointed to hold a general assembly at St. Mary's, on the 12th

day of February next, there to advise and consult upon the enacting of laws and other serious affairs of the province, These are therefore to will and require you, at some convenient time, when you shall think fit, after the receipt of these letters, to assemble at Kent-fort* all the freemen inhabiting within the isle of Kent, and then and there to propose to the said freemen to choose from amongst themselves two or more discreet honest men to be their deputies or burgesses during the next assembly according to the form of an instrument which I herewith send unto you, to which instrument all the said freemen are to set their hands, and if they agree not in the election, then you are to return upon the instrument the names of such two or more persons upon whom the major part of the freemen so assembled shall consent, and you shall require the freemen so assembled to agree upon a certain contribution for the defraying of the charges which such burgesses shall sustain by the repairing to the assembly, and together with them you shall return hither the instrument of their election, signed as is appointed aforesaid; for so doing this shall be your warrant.—Given at St. Mary's, this 21st December, 1638.

To my loving kinsman, WILLIAM BRAINTHWAYTE."

Although the rules of the common law of England were evidently adopted as the principles which were to direct the proceedings of the provincial government, whether legislative or judicial, and by that law the writs of summons to parliament ought properly to be directed to the sheriffs of the shires or counties, who, in case of a city or borough within his county, delivers his precept for that purpose to the proper officer of such city or borough, yet inasmuch as the province was not yet divided into counties, although the district encircling the city of St. Mary's was so denominated, and consisted of several *hundreds*, as legal divisions thereof, it was deemed by the executive proper, that the elections for members of the assembly should be held in and for the several and respective hundreds, as well as

* From the description of the *manor of Kent-fort*, granted to Giles Brent, September 7th, 1640, this *fort* must have been situated on that part of Kent island which borders on what is called the Eastern bay, and, as the manor was located so as to comprehend the neck of land commonly called Kent point, and to contain a thousand acres, the *fort*, being parcel thereof, was most probably situated on the first navigable creek lying on the left hand in ascending the Eastern bay after passing Kent point; and most of the first settlements on that island, were probably made adjacent or near to that fort.

CHAP. II. in the anomalous district of the isle of Kent. This measure was
 1639. probably suggested, partly by the paucity of the population of the country, and partly by the ease and convenience of the inhabitants. As the isle of Kent differed from any other part of the province then inhabited, in having a *deputy* of the governor, under the denomination of a *commander*, to preside over it, the writ of election for that district was necessarily directed to him. But the writs of election, which issued to the several and respective hundreds of the province, which were adjacent to the city of St. Mary's, were directed to some of the principal inhabitants, therein named, of each hundred. That for the hundred of Mattapanient is here inserted at large by way of exemplification of the others.

“Cecilius, lord proprietary, &c. to our trusty Richard Garnett, senior, Richard Lusthead, Anum Benum, Henry Bishop, Joseph Edlo, Lewis Freeman, and any other the freemen inhabiting at Mattapanient, greeting,—Whereas we have appointed to hold a general assembly of the freemen of our province at our fort of St. Mary's, on the five and twentieth day of this instant month of February, these are, therefore, to will and require you, that tomorrow or on Thursday next at the furthest, between one and two of the clock in the afternoon you and every one of you be at our secretary's house at St. John's, there to make such nomination and election of your burgesses for that manor or division of Mattapanient* for the next assembly, as you shall think fit: hereof fail not at your peril. Given at St. Mary's, this 11th of February, 1638.”

The like summonses were issued to each of the other hundreds, (*singula singulis*,) and directed to some of the principal inhabitants thereof in like manner.†

To these several summonses regular *returns* in writing were

* Although the division or election district of Mattapanient is here spoken of as a *manor* and not a *hundred*, yet in the *return*, as will be presently seen, it is called “the *hundred* of Mattapanient.”

† The only writ of summons, which is recorded at large in the record, is that to Mattapanient, as above.—The rest are shortly noted, as,—“The like summons to all the freemen of St. Michael's hundred to meet the secretary at St. Inigoe's house on Monday the 18th of February.

“The like summons to all the freemen of St. Mary's hundred to be at the secretary's house on Tuesday the 19th of February.

“The like summons to all the freemen of St. George's hundred to meet the secretary at the house where captain Fleete lately dwelt, on Thursday the 21st of February.”

made by the secretary, (Mr. Lewger,) before whom the elections were to be held, as may be perceived from the tenor of the writs of summons. The return from Mattapanient hundred is as follows: CHAP. II.
1639.

“14th February, 1638.—Mem’d that this day came before me,* Richard Garnett, senior, Richard Lusthead, Anum Benum, Henry Bishop, Joseph Edlo, Lewis Freeman, and Robert Wiseman, and chose for the burgess of the hundred of Mattapanient, Henry Bishop, and have given unto him full and free power for them and for every of them to be present in their names at the next assembly as their burgess or deputy, and in witness thereof have hereunto set their hands.”

The like returns, (nearly *totidem verbis*,) were made for each of the other hundreds, to wit, St. Mary’s, St. Michael’s, and St. George’s; except, that in the returns for these three last mentioned hundreds, the delegated power was somewhat more fully expressed, as for instance, after the words—“burgess or deputy,” as above, was inserted—“and there to do and conclude in their names as a burgess may or ought to do.”

To these returns the names of the several persons therein mentioned appear to have been subscribed, such returns being somewhat in the nature of a warrant or power of attorney. It is remarkable, however, that although the above returns for Mattapanient is signed by seven persons, yet only one, to wit, Robert Wiseman, could write his name, the rest affixing their marks thereto; and out of fifteen names subscribed to that of St. Mary’s, seven of them made their marks. This gross deficiency in literature among our colonists is not, however, to be imputed to their colonial state. These persons, for the most part, were born and bred in England, and had left their country after the common period of acquiring literary attainments. It was the defect of the age in which they lived. Although the art of printing had tended much to diffuse literature among even the lowest classes of people in Europe, yet the fanaticism and superstition of religion had on all occasions conjointly thrown impediments in the way of the progress of learning.

The return from the isle of Kent was as follows:—

“Know all men by these presents, both present and to come, that we the freemen of the isle of Kent, whose names are here-

* It would appear that the secretary sat as judge of the elections, and therefore the return states, that the electors came “before him.”

CHAP. II. unto written, have elected and chosen our loving friend Nicholas
 1639. Brown, planter, to be our burgess or deputy, during the next

general assembly at St. Mary's, summoned to begin on the 25th of February next, in our names to assent to all and only such things as our burgess shall think fit, thereby giving as free and full consent unto all laws and matters whatsoever, which within the said assembly shall be agreed and concluded of, as if we ourselves in person had consented thereunto.—In witness whereof, &c.”—Signed by twenty-four signatures.*

The like return, in the same words, and signed by the same persons, was separately made for Christopher Thomas, as the other burgess for the isle of Kent.

Besides writs of election so issued, and burgesses thereupon so returned elected, *writs of summons* were also issued to individual persons to appear and take their seats as members of the assembly in their own personal rights, somewhat in the manner of calling a commoner to the house of lords, (in England,) and promoting him to a peerage. It may be perceived from the proceedings of the last session, that every freeman of the province was considered as being entitled, in his own personal right, to a seat in the assembly. Hence it appeared to have been no extraordinary stretch of prerogative in the lord proprietary or his lieutenant general, to call “by special writ” any gentleman “of able judgment and quality”† to be a member of the house of assembly, besides, those elected by the people as their representatives. Although it does not appear from the records, yet it may be inferred, that such persons, so specially summoned by writ, did not give their votes in the election of burgesses or deputies, but retained their personal and individual right to a seat and a voice in the house, and might therefore with legal propriety be called to the assembly as members thereof. This appears to have been done in pursuance of a plan already arranged for

* Supposing these signatures to have been the names of all the male heads of families, then on the isle of Kent, as they most probably were, it would afford a tolerable *datum*, from which might be inferred the aggregate white population of that island at this period of time. Accounting five to a family, the usual computation, the population would amount to one hundred and twenty souls.

† The word “quality” here used was a word in common use in these times, as signifying men of the first rank in society under the degree of nobility, and synonymous to *gentry*. It is particularly so used by lord Clarendon, (in his *Hist. of the Rebellion*, p. 58, 108, fol. edit.) when speaking of the long parliament, in 1640, in removing from the house “many gentlemen” (members) “of good *quality*.”

new modelling the provincial constitution or form of government, CHAP. II.
 and partially carried into execution during the session now about 1639.
 to be held, as will presently be seen. The form of the *special writ* for that purpose was as follows :—

“Cecilius, lord proprietary, &c. to our dear friend and councillor Thomas Cornwaleys, Esq. greeting, whereas we have appointed to hold a general assembly of the freemen of our province, at our fort of St. Mary’s, on the 25th day of February next, we do therefore hereby will and require you, that all excuses and delays set apart, you repair in person to the said assembly at the time and place prefixed, there to advise and consult with us touching the important affairs of our province.— Given at St. Mary’s, the 18th of January, 1638.”

The like writs were issued severally to “Mr. Giles Brent, councillor, Mr. Fulk Brent, Mr. Thomas Greene, and Mr. John Boteler, gentlemen.”

Accordingly, on the day appointed, (on Monday the 25th of February, 1638,—1639, N. S.) the assembly met, at the Fort of St. Mary’s, when were present,—The lieutenant-general, Capt. Thomas Cornwaleys, Mr. Fulk Brent, Mr. Giles Brent, Mr. Secretary (Lewger,) Mr. Thomas Greene, and the following “delegates,” viz. Mr. Gerard and Mr. Gray, for St. Mary’s hundred, Mr. Wickliff and Mr. Revell for St. George’s, Mr. Canther and Mr. Price for St. Michael’s, Mr. Bishop for Mattapanient, and Mr. Thomas and Mr. Browne for the isle of Kent. Their proceedings.

It appears, that immediately after their assembling, “they removed the assembly to be held at St. John’s,” which was probably the mansion house of the manor of St. John’s, near the town of St. Mary’s, reserved for the use of the lord Baltimore or his lieutenant general.

The members being reassembled, and the governor and council, together with the gentlemen specially summoned, having taken their seats with the burgesses or delegates, the lord proprietary’s letter, herein before inserted, was read.

The first business, which appears to have been transacted in the house, (after reading the foregoing letter,) even prior to the formation of rules and orders, was the passing an act entitled, “an act for establishing the house of assembly, and the laws to be made therein ;”—which was done “by the general consent of all the freemen and of the lieutenant general for the lord proprietary.”—The substance of this act was, that “the several persons The constitutional act for establishing the house of assembly.

CHAP. II. elected and returned, (pursuant to the writs issued,) shall be
 1639. called burgesses, and supply the place of all the freemen consenting to such election, in the same manner and to all the same intents and purposes, as the burgesses in any borough in England, in the parliament of England, use to supply the place of the inhabitants of their respective boroughs. And that the gentlemen summoned by his lordship's special writ, to each of them directed, the said burgesses, and such other freemen who have not consented to any of the elections as aforesaid, as shall be at any time assembled, or any twelve or more of them, (whereof the lieutenant general and secretary to be always two) shall be called *the house of assembly*. And all acts, &c. assented unto and approved by the said house, or major part thereof, and afterwards assented unto by the lieutenant general, in the name of the lord proprietary, shall be adjudged and established for laws, to the same force, &c. as if his lordship and all the freemen of this province were personally present and did assent, &c."*

This act was manifestly framed prior to the meeting of the assembly, and, as its utility was evident to all, so it passed by unanimous consent. Although the intention of it was, to give some permanent form to the mode of exercising the legislative powers of the government, yet from the circumstance of its being the very first business of the house on assembling, as well as from its general tenor, it seems to have been intended also to act upon the proceedings of the present session, and not merely as a rule *in futuro* for succeeding legislatures. In confirmation of this supposition we find more explicit regulations on this subject in the next act, and in several bills, of this session. The charter had given to the lord proprietary "free, full and absolute power to ordain, make and enact laws, of and with the advice, assent, and approbation of *the freemen* of the province, or of *the greater part* of them, or of their *delegates* or *deputies*, whom we will shall be called together for the framing of laws, when, and as often as need shall require, by the aforesaid now baron of Baltimore and his heirs, and *in the form which shall seem best to him or them*."—From which it appears, that, although the *form*

* See the *title* of this act and the substance thereof stated in Bacon's laws, under 1638, ch. 1. From a minute in the journals, see "Assembly Proceedings from 1637 to 1658," p. 129,) it appears that this act received the governor's assent on the 25th of February, (the first day of the session,) and "was published under the great seal the 12th of March, 1638,"—1639, N. S.—See the act at large, as it is in the records, in note (XXI.) at the end of this volume.

or mode of calling or convening the assembly was left discretion- CHAP. II.
 ary with the lord proprietary, yet the laws to be enacted must 1639.
 have the assent of a *majority* of all the freemen collected individually together, or of *their delegates*. But it is probable, that the population of the province had now increased so as to render it inconvenient for all the freemen to be present at an assembly. Hence, therefore, the act provided that delegates or deputies should supply the place of such freemen as could not attend, and that such delegates should be called *burgesses*, to the same intents and purposes as burgesses in the parliament of England," intending thereby, that the legislative branch of their government should be in close analogy to that of the parent country.* But notwithstanding this intention of moulding the legislative branch of the government into the *representative* form, yet the assembly appear to have proceeded in a cautious manner in depriving each individual freeman of what might be called his natural right, (though derivative also under the charter,) of assenting in person to all the laws, which were to be obligatory on him. They, therefore, provided, that "gentlemen summoned by his lordship's special writ, and *such other freemen, who have not* consented to any of the elections," should retain their right to a seat in the house. According to this provision, the first entry on the journal, next succeeding the passage of this law, is the following:—"Cuthbert Fenwick claimed a voice, as not assenting to the election of *St. Mary's* burgesses, and was admitted. Robert Clarke, *similiter*,"—in like manner. It seems to have been intended also by the last clause in this act to give some stability to the claim of the freemen of the province, in assembly met, of originating such laws as they should think fit,—a claim heretofore disputed by the lord proprietary, as before stated, but now apparently surrendered according to the terms of his letter just read to the house; and the expressions of the act moreover seem to imply, that the assent of the lieutenant general should bind the lord proprietary so as to take away the final negative of the latter to any laws, which might be passed in the assembly.

* As the Maryland colony borrowed many of its institutions, both civil and political, from her elder sister Virginia, the term *burgesses* might have been adopted in Maryland, in imitation of the like term in Virginia. At the time of the *first* assembly ever held in Virginia, [1619,] "the colony had been divided only into seven hundreds, or distinct settlements, which seem to have enjoyed some of the privileges of boroughs: And from this circumstance the democratic branch of the assembly has been called to this day, the house of burgesses." *Chalmers's Annals*, p. 43.

CHAP. II. But, as the final negative is expressly reserved in his lordship's
 1639. letter just read, and one of the bills of this session, "engrossed but not passed," entitled, "an act, what persons shall be called to every general assembly," has a special provision, in which his lordship's *disassent* is expressly reserved to him, this construction of the act could not be made.*

The house of assembly, having thus digested, as it were, a form of government for the province, proceeded next to frame rules and orders for the regulation of the house in their legislative proceedings. These rules were nearly the same as those adopted at the last session and before recited, except in one regulation relative to the mode of passing laws, which is as follows :

"After any bill hath been once read in the house, the bill shall be read [again two several times, and then]† engrossed, or utterly rejected ; and upon any day or days appointed for a session, all bills engrossed shall be put to the question, and such as are assented to by the greater part of the house, (and if the votes be equal, that shall be judged the greater part, which hath the consent of the lieutenant general,) shall be undersigned by the secretary in these words,—the freemen have assented; and after that, the president shall be demanded his assent in the name of

* It is not improbable, that this prerogative of the lord proprietary, of his final assent or disassent to such laws as might be enacted by the assembly, even with the assent of his lieutenant general, was retained by him in imitation of the like principle in the form of government prescribed to Virginia in the year 1619, under an instrument for that purpose granted and sent to that colony from the treasurer and company in England, who were the *proprietaries* at that time of that colony. By that instrument, (under which sat the first general assembly ever held in that province,) it was provided,—“That no law or ordinance, though approved of by all the three members of the legislature, was to be in force, until it was ratified in England by a general court of the company, and returned under its seal; and on the contrary, that no order of the general court should bind the colony till assented to by the assembly.” *Chalmers's Annals*, p. 54, who cites the Appendix to Stith's Hist. of Virg. See also Robertson's Hist. of Amer. vol. 4, p. 211; and Burk's Hist. of Virg. vol. 1, p. 204. The lord Baltimore might rationally suppose, that he had as much right to a *final* assent or disassent to the laws of his colony, as the Virginia company had to theirs. This duplicate negative, first in the lieutenant governor, and secondly in the king, has always existed in most of the British colonial governments immediately under the crown; and in a palatinate government, as that of Maryland, the lord proprietary would succeed to the prerogative of the king.—See *Edwards's Hist. of the West Ind.* B. vi. ch. 2.

† The space occupied by the words included within the brackets as above, is blank in the record; but I have ventured to fill it up to complete the sense of it, as I have supposed it to be,

the lord proprietary, and if his assent be to the bill, the bill shall be undersigned by the said secretary in these words,—the lord proprietary willeth, that this be a law.”* CHAP. II.
1639.

Another slight variance between the rules of the present session and the last was in the exercise of their compulsory power in obliging their members to a more punctual attendance; the principle of which might, perhaps, with propriety be adopted by modern legislative bodies.—“If any gentleman or burgess doth not appear upon call, at such time as the president is set at or after either of the said hours,” (before appointed,) “he shall be amerced 20 *lb.* of tobacco, to be forthwith paid to the use of the house.”†

The remainder of this first day of the session appears to have been principally occupied in reading for the first time several bills apparently calculated for the better regulation of the affairs of the province. The house then adjourned until Thursday the 28th of February, thereby leaving an intervention of two days, probably with a view of giving time for the preparation of other bills.

On the day appointed, (Thursday, 28th of February,) the house met, and, after several other bills were read, they proceeded to the exercise of their *judicial* powers, in hearing two several causes, one a *civil* case for debt, and the other a *criminal* one. The following entry on the journal relates to the first. “Then was heard a cause between Richard Loe and Reinold Fleete, and was adjudged by the major part, that the defendant should pay the plaintiff 30 *lb.* of *beaver* for his whole demand.”‡ The other, a *criminal* case, seems to be of such importance as to demand some notice; inasmuch as it has been said to have been acted on by the house on the same principle of necessity as in the case of

* Thus in England the royal assent is given in these words,—“*Le Roy le veut*, the king wills it.”

† Agreeably to this rule two entries appear on the journal, thus,—“The captain,” (Cornwaleys,) “amerced 20*lb.* tobacco for tardie.” Mr. Giles Brent and Mr. Greene also.—Although a statute was made in the reign of Richard the second, [5 *Rich.* 2, ch. 4,] to compel the attendance of members of parliament, yet it is plain, from the expressions of the statute, that it was *declaratory* of the common law. “If any person summoned to parliament, do absent himself, he shall be *amerced*, and otherwise punished according as of *old times* hath been used to be done within the said realm in the said case.”—4 *Inst.* 43.

‡ Another *civil* cause was heard and determined by the assembly on a subsequent day, between captain Cornwaleys and Thomas Morris on a contract for rent.

CHAP. II. Thomas Smith in the last session.* It is thus mentioned in the
 1639. journal. "The sheriff was warned," (in the morning,) "to bring into the court in the afternoon the body of John Richardson, and to warn William Brough to give in evidence. In the afternoon;—then was called John Richardson, and charged with flight and carrying away of goods unlawfully from his master, and found guilty by the whole house, and adjudged by the house to be whipped three several times." This sentence, however, did not pass unanimously. Mr. Greene voted for him "to be hanged." Mr. Giles Brent and Mr. Fulk Brent—"to be whipped very severely." "The captain," (by whom was meant captain Cornwaleys, and who is often distinguished in the early part of the records of the province by that appellation,) voted for him "to be whipped, provided that he was sorrowful for his fault." "The President," (governor Calvert,) "to be laid in irons, and whipped three several times severely." Which last opinion seems to have prevailed, according to the terms of the sentence as above.

Although many bills were brought forward at this session with an intention of providing in a distinct and separate manner for the various exigencies of the province; yet it appears, that these bills did not receive the final assent of the house, and were never completely enacted into laws.† What causes operated to prevent the final passage of these bills, we are no where informed, nor is it easy to substitute any conjecture of them. On the last day of the session, however, a law was finally passed, which seems to have been intended to comprehend the substance of most of these bills, which had been thus introduced into the house, but not finally passed. The title of the act was sufficiently comprehensive for that purpose, being entitled, "An act ordaining certain laws for the government of this province," which act, by a comparison with these bills, evidently appears to have been intended as an abridgment of them. The title of this act also, indicates that the "laws" to be "ordained" were these bills, most of which are but amplifications of the several different sections of the act.

* See the "*Memorandum*" in Bacon's laws at the end of his list of the bills of this session; 1638, ch. 2.

† The following entry, relative to these bills, appears on the journal of the house;—" *Memorandum*, That these bills were ingrossed to be read the third time, but were never read nor passed the house. John Lewger."—After which, in the same record book, follow all the thirty-six bills at large.

The caption of the act, 1638, ch. ii., passed 19th of March, 1638, (O. S.) according to the record of it,* is as follows: CHAP. II.

“At a session of general assembly at St. Maries, on the 19th of March, 1638, to the honour of God and the welfare of this province was enacted as followeth:

“An act ordaining certain laws for the government of this province.

“For the better government of this province, be it enacted and ordained by the lord proprietarie of the same, of and with the advice, assent and approbation of all the freemen and burgesses assembled in this present assembly in manner and form following:

“Sect. (1.)† Holy church within this province shall have all her rights and liberties.”

Among the bills just mentioned, introduced into the house at this session, was a very short one, entitled, “An act for church liberties,” and was expressed nearly in the following words,—“Holy church within this province shall have all her rights, liberties and immunities, safe, whole and inviolable in all things.” The foregoing clause or first section of this *act* seems, therefore, evidently to have been intended only as an abridgment or rather an enactment of the *bill*. They were both, most probably, intended also as copies of the first clause in the statute of *magna charta*, to wit,—“That the *Church of England* shall be free, and enjoy her whole rights and liberties inviolable.”‡ Indeed, the whole of this act of assembly, (1638–9, ch. 2,) as to its form, bears considerable resemblance to *magna charta*, the former consisting of distinct sections or paragraphs, as the latter of distinct chapters, relative to distinct and unconnected subjects. *Magna charta* has been denominated a “collection of statutes;”§ in like manner this act of assembly may be said to be a collection of most of the bills before mentioned.|| It has been supposed, that

1639.
The general act “for ordaining certain laws for the government of the province,” stated, with comments thereon.
First, for securing the rights of the church.

* See the record book in the present court of appeals’ office.—“Lib. C&WH.” p. 63.

† The sections of this act are not numbered in the record, but are so in *Bacon’s Collection of the Laws*, whose method, for the sake of perspicuity, is here followed.

‡ See king John’s charter in Rapin’s *Hist. of Eng.* (Tindal’s edit.) vol. 2, p. 505, and that of Henry the third, in the statutes at large.—It scarcely needs observation that the “Church of England” was, at the times both of making and confirming *magna charta*, the same as the *church of Rome*, to which the appellation of “Holy Church,” was then commonly applied.

§ *Barrington’s Observations on the ancient statutes*, p. 3.

|| The oldest laws now to be found on record in Virginia are drawn up in distinct *articles*, (on distinct subjects,) in the manner of this act of Maryland, of 1638, ch. 2. See Burk’s *Hist. of Virg.* vol. 1, p. 279, 280.

CHAP. II. the “liberties of the *English* church,” insisted upon in *magna*
 1639. *charta*, “were chiefly its immunities from the *papal* jurisdiction,”* which, in the reign of king John, about the time of the first making of *magna charta*, had been carried to an unbounded extent, and in the reign of Henry the third, when the *confirmation* of it took place at Runymede, still existed in great force. It is some proof of the truth of this supposition, that immediately following this clause in *magna charta*, as it was granted by king John, an explanatory clause is added, relative “to the *freedom of elections*, which is reckoned most necessary for the church of England;” which clause is omitted in that of Henry the third.† But, according to the opinion of Lord Coke,‡ it would appear, that this clause was inserted in the *magna charta* with a view of protecting the church of England, as well from the encroachments of the monarch and the power of the barons, as from that of the pope. “That the church of England should be free,” he explains to mean, “that all ecclesiastical persons within the realm, their possessions, and goods, shall be freed from all unjust exactions and oppressions, but notwithstanding should yield all lawful duties either to the king or to any of his subjects;” and in further explanation of this clause, as to the “rights and liberties” of the church, he pursues the same idea.

But it is observed on this clause in our act of assembly, by a learned annalist of our country;§—“What the franchises of the church of Maryland were, do not appear; and probably the wisest of her doctors would have been puzzled to tell.”—The contemptuous sneer of this remark is, however, not altogether correct. It is certain, that a majority of the colonists of Maryland were, at the time of this session of assembly, English Roman Catholics. They professed themselves to be of the same church as that alluded to in *magna charta*, to wit, the Roman Catholic Church, which was, at the time of making *magna charta*, the church of England, as therein expressed. The expression,—“holy church,” used in the act of assembly, occurs

* Barrington’s Observations on the ancient statutes, p. 6.

† The “freedom of elections” here relates to the election of the dignitaries of the church, as archbishops, bishops, &c.; and the insertion of it was most probably occasioned by the then recent dispute with pope Innocent the third on his arbitrary appointment of cardinal Langton as archbishop of Canterbury.—See king John’s charter as it is in Tindal’s edition of Rapin’s Hist. at the end of vol. 2; also 1 *Bl. Com.* 379.

‡ 2 *Inst.* 2.

§ Chalmers’s Annals, p. 213.

not only in magna charta, but in most of the other charters prior to it, and indeed is a well known expression commonly applied to the Church of Rome.* Although the provincial government of Maryland did, as we have before seen, permit Protestants to reside within the province, yet it does not appear, that they had no intention of making the Roman Catholic Church the *established church* of the province. When we reflect on the original causes of their emigration, on this legislative provision for the benefit of their church, and on a similar one passed in the succeeding year, 1640, we cannot but suppose, that it was the intention of those, in whose hands the government of the province was, (a majority of whom were, without doubt, Catholics, as well as much the greater number of the colonists,) to erect a hierarchy, with an ecclesiastical jurisdiction, similar to the ancient Church of England before the reformation, and to invest it with "all its rights, liberties, and immunities." It is probable, however, that they felt themselves checked in carrying these intentions into execution by the reflection of their being still under the superintending dominion of the Protestant hierarchy of the mother country, and therefore they permitted *heretics* to become colonists among them; though it does not appear that these heretics or Protestants enjoyed any other *immunity* than a mere toleration of residence and a security in the protection of their persons and property.† If then, as we may fairly presume, it was the intention of the lord proprietary, as well as the ruling persons of his colony, to engraft the Roman Catholic Church into the constitution of the provincial government, as the *established hierarchy* of the state, "the rights, liberties, and immunities of *holy church* would have immediately sprung up in luxuriant abundance; nay, indeed, those of the present reformed church of England, though far short of what they were prior to the reformation, are not of an inconsiderable number. Lord Coke, in his comments on this clause of magna charta, after the following observation, mentions some of them;—"And true it is, that ecclesiastical persons have more and greater liberties than other of the king's subjects, wherein to set down all

* The words—*Sancta Ecclesia*, or "holy church," occur in the charters of Henry the first, king Stephen, Henry the second, king John, and Henry the third. See these charters at the end of the second volume of Tindal's edition of Rapin's Hist. of England.

† The proclamation before alluded to, to prevent disputes between Protestants and Papists, most probably went no further than *protection*.

CHAP. II. would take up a whole volume of itself, and to set down no example agreeeth not with the office of an expositor." He then mentions the privileges of clergymen in being exempted from serving in any temporal office,—from serving in militia,—from paying tolls and customs, average, pontage, paviage, and the like, and their goods were privileged from the king's distresses, or from purveyance—at that time a grievous burthen. It cannot be denied, that, if this religious establishment had taken place, most, if not all, of these "liberties and immunities" would have appertained to the Maryland church. It would probably also have been endowed with large portions of real property, when an observation of lord Coke on this subject would again occur;—"great were sometimes their *rights*, for they had the third part of the possessions of the realm.*

An oath of
allegiance
to his ma-
jesty pre-
scribed.

Sect. "(2.) All inhabitants shall take an oath of allegiance to his majesty."

This act, however, did not prescribe the form or terms of the oath so directed to be taken; as may, indeed, be inferred from the expression—"an oath of allegiance,"—leaving the form of such oath to be prescribed by some other act of the legislature. This omission can be accounted for only upon the supposition, that the *bills* before mentioned, "twice read, and engrossed, but not passed," were nevertheless considered as *directory* to, if not *obligatory* upon, the inhabitants of the province; and, therefore, that the bill, entitled "an act for swearing allegiance,"† which prescribed the form and terms of an oath of allegiance, should be the oath to be taken under this clause of the act of assembly. It will be recollected, that the oath of allegiance prescribed by the statute of 3 Jac. 1, ch. 4, was the English oath of allegiance in force at the time of lord Baltimore's visit to Virginia, when it was there tendered to him, and which he refused agreeably to the general resolution entered into by all the English Roman Catholics, under the positive commands of the pope. As our colonists of Maryland professed to be subjects of the king of Great Britain, it was necessary, that some oath of allegiance should be adjusted, so as that conscientious Roman Catholics might take it without hesitation. We find, accordingly, a bill among those passed at the preceding session of assembly, the second held in the province, as before men-

* 2 Inst. 3.

† See the *title* of this bill, inserted as No. 2, among the thirty-six bills of this session, enumerated in Bacon's Collection of the Laws.

tioned, in the year 1637, (1638, N. S.) entitled, "a bill for swearing allegiance to our sovereign, &c."* But as no records of these bills are now to be found, we are unable to ascertain its contents. The bill first above mentioned, however, of the next and present session, of which we are now treating, is still upon record, and, as it appears to have been acted under, in virtue of the reference to some oath unascertained by this act of 1638, ch. 2, but ascertained by the bill, and as it exhibits the *political* state of the colony, in relation to the English crown, it may with propriety be here inserted.†

Many parts of this bill, and much of the form of the oath prescribed by it, seem to have been copied from the statute of 3 *Jac.* They both prescribe the oath to "any person of the age of eighteen years or above," and the oaths are verbally the same as far as the words—"dominions and countries." The form prescribed by the statute then requires a negation of the power of the pope to depose the king, or to intermeddle in the affairs of the kingdom, which that of the bill omits. A most important variance; and which seems to have constituted the great stumbling block of the English Roman Catholics of those times. Also, the expression in the bill,—"*lawful* successors," which is not in the clause analogous to it in the statute, wears the appearance, as if our provincial legislature meant here to leave room for future equivocation on the *lawful* succession to the crown. Possibly they thought, that, if the pope should object to the descent of the crown in any future case, as he did to that of Elizabeth, it would not have been considered by the papists as a *lawful* succession.—Another material variance appears between the two oaths;—in the statute, it is expressed,—"*against his or their persons, their crown and dignity;*" in the bill, the word "*persons*"—is omitted. So that if the dictates of their religion prescribed an assassination of the king, the *person* of the king was not secured by the oath prescribed by our legislature.

To corroborate the suggestion we have made, that this bill, entitled, "an act for swearing allegiance," as well as the rest of the bills of this session, mentioned to have been read twice and engrossed, but never read a third time, were nevertheless considered as *laws of the province*, and acted under as such, it may be proper to mention, that at a court holden at St. Mary's on

* See the *title* of this bill among those of that session, enumerated in Bacon's *Laws*, as No. 21.

† See note (XXII.) at the end of this volume.

CHAP. II. the 20th of March, 1638-9, which was the next day after this
1639. present assembly rose, the oath of allegiance, as prescribed in the foregoing bill, was taken by the governor and council, and so expressly referred to in the record.*

Sec. “(3.) The lord proprietary shall have all his rights and prerogatives.”

The rights
and prerogatives
of the lord
proprietary
secured.

Among the bills before mentioned, “engrossed but not passed,” is one, entitled, “an act for maintaining the lord proprietary’s title to the lands of this province.”—We may suppose, that his “title to these lands” would naturally be included under the denomination of “his rights,” secured to him by this act. It will be recollected, that both the right and title of the lord Baltimore to the lands of this province, or to a considerable portion of them, had been disputed by William Clayborne and those who claimed under him; which claim of his was founded, not only on his royal license to trade with the Indians, but also, as he alleged in his petition, before stated, on his purchase of these lands, at least of the isle of Kent, from the Indian kings. It is possible, that others also were now imitating Clayborne’s conduct, and pretended by such purchases to acquire titles to lands within the limits of the province independent of the lord Baltimore. It would appear also, from the tenor of this *bill*, just above mentioned, that the Maryland government were apprehensive or had received information, that purchases of lands, within the limits of the province, had been lately made of the subjects of a “foreign prince or state,” most probably either the Swedes or Dutch, whose subjects were now busy in forming settlements on the west side of the Delaware river. As lord Baltimore’s grant included, as he contended, (and perhaps justly,) the whole of the peninsula between the Delaware and the Chesapeake, from the capes of the former to the mouth of the Schuylkill, it was natural for his agents in Maryland to be jealous of these encroachments by the Swedes and Dutch on the lands of his province.

It was, therefore, enacted by this bill, “for maintaining the the lord proprietary’s title,” &c., that—“No subject of his majesty’s the king of England, or of any other foreign prince or

* The following entry is in the book, entitled,—“Council Proceedings from 1636 to 1657,” p. 40—“Then the governor authorized the secretary to administer to him *the oath of allegiance* as it is recorded in the bill of the last assembly, entitled, “an act for swearing allegiance;” Then the governor administered the same oath to all the council.”

state shall obtain, procure, or accept of any land within this province from any foreign prince or state, or from any person whatsoever, (the natives owners of the land excepted,) other than from the lord proprietary or his heirs or some person claiming under him or them.—Neither shall he obtain, procure, or accept of any land within this province from any Indian to his own or the use of any other than of “the lord proprietary or his heirs, nor shall hold or possess any land within this province by virtue of such grant, upon pain that every person offending to the contrary hereof shall forfeit and lose to the lord proprietary and his heirs all such lands so accepted or held without grant of the lord proprietary or under him.”* CHAP. II.
1639.

Under this branch of this act of 1638–9, also may be noticed another of the bills of this session, entitled, “an act for trade with the Indians;” inasmuch as it seems to have particular relation to the “rights and prerogatives” of the lord proprietary. It would seem, that those who claimed under Clayborne, perhaps Virginians as well as some of the inhabitants of the isle of Kent, had never relinquished the practice of carrying on an illicit trade with the Indians resident within the limits of the province of Maryland. The waters of the Chesapeake, navigable in so many branches of rivers and creeks intersecting the province in every direction, formed, without doubt, from its great convenience for the purpose, a considerable temptation to this illegal traffic with the natives. It appears to have been a source of uneasiness to lord Baltimore’s government from the first settlement of the province to the period of time of which we are now treating. The governor and council had accordingly at various times endeavoured to check this illicit trade by ordinances and proclamations for the purpose. But it was, probably, now thought, that it would be more consonant to the liberties of the freemen of the province, to interpose the less exceptionable power of the legislature in prescribing some check to the proceedings. A bill was, therefore, introduced into the house of assembly on the third day of its session, (March 1st,) “for trade with the Indians;” but, according to the journal, it was “rejected upon reading the first clause, by all except the captain, the president, and the secretary.”† For what reason this

* Lib. C. and WH. p. 8.

† It has been before observed, that whenever the words,—“the captain” occur on our first records, they were meant to designate captain *Cornwallis*.

CHAP. II. bill was now rejected, it does not appear. However, notwithstanding the rejection of the bill, the governor, probably incensed at some present existing abuses and insolencies to the government of that nature, thought it proper to exert his prerogative, without the aid of the assembly, in suppressing this illegal traffic, and accordingly in a few days after the rejection of the bill, during the session, issued his warrant or commission for arresting all persons with their vessels and goods, trading without license with any Indians within the province.* Also, on the next day after issuing this warrant, to wit, on the seventh of March, another bill with the same title was introduced in the house; but as the bill was about to be read, a member objected against it, as being a bill before rejected.—“The secretary replied, that it was a new bill, though with the former title, and that the house could not judge, whether it were to be read again, or no, before they heard it read. The gentleman objected, that it was against form and order. The secretary replied, that the order spoke of “utterly rejecting a bill,”† but this was not “utterly rejected” by the house, in regard divers assented to it, and therefore it could not be put to the house to vote the passing of it till the third reading; and accordingly, with the consent of the house, the secretary proceeded to read it as the first time of reading. The gentleman interrupted, and desired first to read some propositions to the house touching the bill; but it was adjudged, that the bill should first be read, and then he might object what he pleased. So the bill was read.”‡

It must be confessed, that the secretary's reasoning here does not appear quite satisfactory. It can hardly be supposed, that the words—“utterly rejected,”—were meant as being synonymous to “unanimously rejected;” for, according to parliamentary usage, then as well as at this day, a majority of voices always decided at any reading of a bill; and, as it seems, if the opposition succeeds at either of the readings, the bill must be dropped for that session.§ The first reason assigned by the secretary seems, however, to have more weight in it than his construc-

“The president” was governor Leonard Calvert, and “the secretary” Mr. John Lewger.

* See this warrant or commission in note (XXIII.) at the end of this volume.

† See this rule of the house stated before, p. 104.

‡ See the journal of this session in the record book in the council chamber, entitled, “Assembly Proceedings from 1637 to 1658,” from p. 36 to p. 53.

§ See 1 Bl. Com. 182.

tion of the rule. If the second proposed bill differed in *sub-* CHAP. II.
stance from the former rejected bill, though having the same ti- 1689.
 tle, it could not be the *same* bill as the one before rejected, and
 therefore not within the rule of rejection. This seems to be im-
 plied from a parliamentary rule in England, which has been
 adopted in America.—“A bill once rejected, another of the *same*
substance cannot be brought in again the same session.”* But
 if the second bill is not of the *same substance*, the inference is,
 that it may be brought in again the same session, although it
 have the same title. Also, if the law be, that the *title* of a statute
 is no part of the statute,† it would be immaterial, whether the
title of the second bill was the same as that of the former, or
 not, provided the body of the bill differed in substance from that
 of the former.

The secretary, however, succeeded; for, on the next day, the
 eighth of March, the same bill was read a second time and en-
 grossed for a third reading. As this bill throws considerable
 light on the contested title of the lord proprietary to his province,
 and moreover is illustrative of some historical facts of this period
 of time, the reader will find it among the documents at the end
 of this volume.‡

It was probably in furtherance of this bill, that a new com-
 mission, nearly similar to the preceding one to John Harrington,
 was made out on the eleventh of March, (two days after this bill
 was ordered to be engrossed,) to two persons, (to wit, “Cuthbert
 Fenwick, gent. and John Hollis, mariner,”) authorising them to
 search and seize all vessels, &c., so illicitly trading with the In-
 dians of the province.§

Sect. “(4.) The inhabitants shall have all their rights and The rights
 liberties according to the great charter of England.” and liber-
 ties of the
 people se-
 cured.

Among the bills agreed to at the former session of 1637, (O. S.)
 was one entitled, “A bill for the liberties of the people.” It is
 probable that the bill at this present session, among the thirty-
 six bills before mentioned,) entitled, “An act for the liberties of
 the people,” was a copy of that bill introduced at the preceding
 session. As the latter bill is still extant upon record, the sub-
 stance of it may be here stated as explanatory of the fourth sec-
 tion of the act just above recited.

* *Jefferson's Manual*, sect. 43; who cites *Hakeor*, 158. 6 *Grey*, 392.

† 2 *Bac. Abr.* tit. Statute, (I.) pl. 10.

‡ See note (XXIV.) at the end of this volume.

§ “Council Proceedings from 1636 to 1657,” p. 38.

CHAP. II. 1639. "Be it enacted by the lord proprietarie of this province, of and with the advice and approbation of the freemen of the same, that all the inhabitants of this province being christians, (slaves excepted,)* shall have and enjoy all such rights, liberties, immunities, privileges and free customs, within this province, as any natural born subject of *England* hath, or ought to have or enjoy in the realm of England, by force or virtue of the common law or statute law of England, saving in such cases as the same are or may be altered or changed by the laws and ordinances of this province; and shall not be imprisoned or disseized or dispossessed of their freehold, goods or chattels, or be outlawed, exiled, or otherwise destroyed, forejudged, or punished, than according to the laws of this province: saving to the lord proprietary and his heirs all his rights and prerogatives by reason of his domination and seigniory over this province, and the people of the same."†

This *bill* appears to have been intended, not only as a recognition of the extent of the common and statute law of England to this province, but also as a *specification* of those particular clauses of magna charta by which the "rights and liberties" of the inhabitants were to be secured to them. But the *act*, more properly perhaps, by a *general* clause, recognizes the whole of such parts of magna charta as relate to the "rights and liberties" of the people.

It must be observed, that these legislative proceedings throw great light on the political relations, which, in the estimation of our earliest colonists, subsisted between the province and the mother country. We may here trace the sources of that enthu-

* *Chalmers*, in his annals, (p. 214,) thus remarks on this bill.—"Slavery seems to have rooted in Maryland with the original emigration: because an act of this assembly describes "the people," to consist of all christian inhabitants, "slaves only excepted." A probable reason for this may be added; that, as Maryland borrowed most of its provincial institutions from Virginia, slavery was amongst the first of those introduced from thence, where it had without doubt existed from the time of the first importation of negroes into that colony in the year 1620, or 1619, as we have before stated. If the slaves, alluded to in the above bill, were negroes, as they most probably were, the above exception seems to countenance the idea, subsequently taken up, that making a negro a christian, by baptizing him, was emancipating him; against which idea an act of assembly, (1715, ch. 44) in force at this day, very gravely provides. The illiberality also of this bill, in confining the enjoyment of "English rights and liberties" to *christians* only, ought not to pass unnoticed. Neither a Jew nor an infidel of any kind were considered as being entitled to any "rights or liberties." But, strange to tell! this narrow-minded policy subsists in the *free* State of Maryland to this day.

† "Lib. C and W H," p. 2.

siasm, which so strongly manifested itself in succeeding times, whenever the American colonists apprehended only, that these "rights and liberties," which they claimed as secured to them "by the great charter of England," were in any manner endangered. It might justly, therefore, excite surprise that so learned a lawyer as Sir Thomas Trevor, the attorney-general in the reign of William the third, should express doubts, "whether the great charter had ever been extended to *Maryland*, or whether it was proper to allow the people there the various privileges contained in it."* If it be true, as alleged by lord Coke, that "magna charta was, for the most part, declaratory of the principal grounds of the fundamental laws of England;"† and if the position be correct, that "our colonists brought with them so much of the English law as was applicable to their situation and condition;"‡ it must necessarily follow, that such parts of magna charta as were applicable to the situation and condition of the colonists of Maryland extended to that province; but, could a doubt possibly arise as to its actual extent, revolutionary events must have long since convinced every thinking Englishman, that "it was always proper to allow the people there the various privileges contained in it."

Sect. (5 and 6.) The two next clauses of this act of 1638–9, *CHAP. II.* ch. 2, seem to have been intended to make further regulation of the *judiciary* department of the government and of the administration of justice. They will, therefore, be considered here in conjoint view. 1639.
The administration of justice regulated.

"(5.) The lieutenant general (within the province) and the commander of the isle of Kent, (within that island,) except appeal be made from him, and the council of the province in causes wherein the lieutenant general is plaintiff, shall cause right and justice to be done in all causes *civil* according to the laws or laudable usages of this province, or otherwise according to the laws or laudable usages of England in the same or the like cases, as near as he or they shall be able to judge. And shall try all such causes, and use, command, &c., all power and means necessary and conducing thereunto. And the said lieutenant-general and commander shall take an oath to administer equal justice to all persons, without favour or malice of any one.

"(6.) The lieutenant general, or any one of the council (with-

* Chalmers's Annals, p. 214.

† 2 *Inst.* proem.—1 *Bl. Com.* 127.

‡ 1 *Bl. Com.* 107.

CHAP. II. in the province,) and commander of Kent (within that island,) shall use, &c., all power and means necessary to the apprehending of felons, or keeping of the peace. And the lieutenant-general and council shall and may try and censure all offenders with any punishments as they shall think the offence to deserve; except that in crimes extending to life or member, the offender shall be first indicted, and afterwards tried by twelve free-men at the least. And the commander of Kent (within that island,) shall and may try and censure all offenders within that island, with such corporal shame or correction (not extending to life or member,) as he shall think the offence to deserve. And every councillor shall take oath to defend and maintain the rights and prerogatives of the lord proprietary in all things, and to assist the execution of justice without favour or malice of any one, and to do all other things as becomes a councillor to do."

It does not appear, that any material alterations in the mode of distributing justice, were made by these clauses of this act from what had been before adopted under the *executive* authority of the government through the means of the commissions before stated; but they seem to have been rather intended as a *legislative* confirmation of those previous arrangements. The question which occurred at the last session of the legislature, relative to the extent of the laws of England within the province, seems to have been here ascertained and settled. In *civil* cases, "right and justice was to be done according to the laws or laudable usages of this province, or otherwise according to the laws or laudable usages of England in the same or the like cases." The laws or laudable usages of this province must have meant the *acts of assembly and the practice* of the courts of the province; in default of these the *common law* of England; which was nothing more, indeed, than confirming by act of assembly the directions in the commissions before stated. The exception in the fifth section, in cases of *appeal* from the commander of Kent, presupposes an *appellate* jurisdiction in the provincial court at St. Mary's held before the lieutenant general, as we have before mentioned.

A variance appears in the powers of the lieutenant general in *civil* and *criminal* cases. In the former, he seems to be constituted sole judge of the supreme provincial court. But, as by his last commission from the lord proprietary, of the 15th of April, 1637, before mentioned, he was directed "to advise from

time to time" with his council, "as he shall see cause upon all occasions," some of the members of the council seem generally to have sat as associates with him, constituting, as we have before mentioned, what subsequently obtained the name of the "provincial court." In *criminal* cases, however, it seems to have been very properly considered, that, to vest in the hands of any one man a power and jurisdiction over the *persons* of the inhabitants of the province, would be too dangerous for the peace and happiness of the community. It was, therefore, specially and expressly provided by this act of assembly, that "the lieutenant general and council were to have jurisdiction over "all offenders;" in which respect, there seems to be some variance between the commission of the 15th of April, 1637, and this act; for, the commission seemed to authorize the lieutenant general *solely* to take cognizance, of all *criminal* cases, except where the life or member of a person was involved in the punishment; but this act seems to be express in requiring *the council* to be a part of the court in every criminal case, whether it extend to life or member, or not. It is true, that the commission authorized the governor to call in the assistance of his council "upon *all occasions*, as he should see cause," and it is probable, he so did, even in minor criminal cases, where he was not expressly so directed by his commission. It was more proper, however, that an express legislative provision should be made for the purpose. But it is observable, that the commander of the isle of Kent, having no council, was invested with a *sole* jurisdiction over all offences, short of a punishment affecting life or member.

It may be remarked, that the expressions,—“with any punishments as they shall think the offence to deserve,”—gave, perhaps, too great a latitude to be vested in any tribunal. But this, we may suppose to mean that *legal* discretion spoken of by lawyers, under the maxim,—*discernere per legem quod sit justum*; and would then amount only to that discretion, which the common law reposes in the judges of all its criminal courts, in respect to fines and corporal punishments. A stronger objection seems to arise to that part of the act, where it appears to authorize a *summary* mode of trial in inferior cases of criminal jurisdiction, without the intervention of either a grand or petit jury, by providing specially, by way of *exception*, that such proceedings shall be had "in crimes extending to life or member."

CHAP II. On the principle, that *exceptio probat regulam*, we are to infer
 1639. that the trial by jury was not deemed a matter of right in minor criminal cases.

Another defect appears in this act of legislature, with regard to the subject matter upon which this criminal jurisdiction thus erected was to act. In crimes not extending to life or member, the common law was without doubt to be their guide; but by the commission of the 15th of April, 1637, where the life or member of any person came in question, they were to determine “according to the laws of the province,” which expression, as before observed, meant—acts of assembly. But the legislature had provided no acts of assembly in cases of crimes punishable with the loss of life or member, and, if such crimes should be committed, recourse could not be had to the common law of England, for such, it seems, had been their construction of his lordship’s commission, that it prohibited them from the punishment of crimes affecting life or member without the authority of “laws of the province.” From this a strong inference arises that the number of *bills* brought forward at this session, for the punishment of capital as well as other offences, were supposed and intended as the “laws ordained” by force of the general act, to supply the silence of that act relative to crimes generally, and particularly as to those affecting life or member. We shall, therefore, proceed to a consideration of some of the most prominent and important of these *bills*.

Some particular laws for the punishment of crimes.—First, for that of treason.

According to the gradation in the scale of crimes, the first that attracts our notice is the bill, entitled, “an act for treasons;” by which the following offences were to be adjudged treasons within this province. “To compass or conspire the death of his majestie the king of England, or the queen his wife, or of his son and heir; or to levy war against his majesty, or to counterfeit the king’s great or privy seal, or his coin; or to join or adhere to any foreign prince or state, being a professed enemy of his majesty, in any practice or attempt against his said majesty: or, to compass, conspire, or cause the death of the lord proprietary within this province, or of his lieutenant general for the time being, (in absence of his lordship,) or to join, adhere, or confederate with any Indians, or any foreign prince or governor to the invading of this province, or disheriting the lord proprietary of his seigniory and dominion therein. All offences of treason to be punished by drawing, hanging, and quartering of a

man, and burning of a woman; the offender's blood to be corrupted, and to forfeit all his lands, tenements, goods, &c., to his lordship. But punishment of death to be inflicted on a lord of a manor by beheading."* CHAP. II.
1689.

The only new treasons, different from the statute of 25 *Edw.* 3, introduced by this bill were, that which consisted in compassing the death of the lord proprietary during his residence within the province, and those enumerated in the subsequent part of the bill. It must be acknowledged, that to confederate with or adhere to Indians or any foreign prince or governor for the purpose of invading the province, as well merited the punishment of treason, as an invasion of the mother country. The punishment of death by *beheading*, prescribed by this bill also, in favour of lords of manors, seems to be some proof among several other circumstances, which appear on the records, that the institution of an order of nobility was contemplated by the lord proprietary for many years after the first emigration of the colony; to the creation of which he was authorised by the fourteenth section of his charter.

Another bill also, entitled, "an act for felonies," was proposed at this session; by which the following offences were to be adjudged *felonies*, punishable with death.† For felonies. "Homicide;—bloodshed, committed by assault upon the person of the lieutenant general;—to shed the blood of any judge sitting in court;—burglary, robbery, polygamy,‡ sacrilege, sorcery, petit treason, sodomy, and rape."—It was also made "felony within this province to commit *idolatry*, which is" (as defined by the bill,) "the worshipping of a false God;"—or to commit "blasphemy, which is a cursed or wicked speaking of God;"—or to commit "perjury, which is false witness against another's life;—or "to sell, give, or deliver to any Indian, or to any other declared or professed enemy of the province, any gun, pistol, powder, or shot without the knowledge or license of the lieutenant general, or to

* Lib. C. and WH. p. 45.

† As the next bill, immediately following this, entitled, "an act allowing book to certain felonies," was evidently framed for the purpose of ascertaining what felonies or crimes should be entitled to the *benefit of clergy*, and therefore not capital or punishable with death, it is clear, that this first mentioned bill, entitled, "an act for felonies," was made to take away clergy from the crimes therein specified, and make them capital, that is punishable with death *without the benefit of clergy*, or "allowing book" to them.

‡ See note (XXV.) at the end of this volume.

CHAP. II. teach any Indian or other declared enemy of the province the
 1689. use of the said arms or the making thereof.

“The offender in any of these felonies to suffer pains of death by hanging, forfeit to the lord proprietary all the land in the province whereof he was seized at the time of the offence committed, (saving to the widow her dower, and to the heir his or her inheritance, if claims be made thereof within three years after judgment given,) and all his goods and chattels whereof he was possessed at the time of his conviction.

“Provided, that in petit treason the punishment of death shall be inflicted by drawing and hanging of a man, and by burning of a woman ;—and in sorcery, blasphemy, and idolatry by burning.”

“Accessaries before the fact to be punished as the principals.”*

It must be acknowledged, that this part of the penal code here prepared for our infant colony was a bloody and severe one indeed. The punishments annexed to some of the offences therein described seem to have been exaggerated beyond what they even then were in England. Sorcery or witchcraft was then punishable in England under the statute of 1 *Jac.* 1, ch. 12, by which the offender was “to suffer the pains of death as a felon without benefit of clergy,” that is, *by hanging*. It is to be observed, that prior to the reformation in England, sorcery was considered as synonymous to a species of *heresy*; and therefore came under the conusance of ecclesiastical judges, upon whose sentence the writ *de heretico comburendo* issued;† so that the punishment of this offence under the catholic government, prior to the reformation, was *burning*. But, at the commencement of the reformation, in the reign of Henry the eighth, when it was in many instances thought proper to transfer judicial power from the ecclesiastical to the lay judges, this offence was (by the statute of 33 *Hen.* 8, ch. 8,) made felony without benefit of clergy, and consequently cognizable in the temporal courts, and punishable *by hanging*. The fluctuating state of the reformed religion, at its first commencement in England, caused this statute, together with others relative to new made felonies and treasons to be repealed by several successive statutes in the subsequent reigns; and the subject thus rested, until that propensity to metaphysical disquisitions, blended with religious weakness, so cha-

* Lib. C. and WH. p. 46.

† 3 *Inst.* 44.

racteristic of the mind of king James, as also perhaps of the age in which he reigned, permitted the imaginary offence of witchcraft to be again cognizable by the temporal tribunals, and made felony without benefit of clergy by the statute of 1 Jac. before mentioned. It might have been supposed, that the colonists of Maryland would have considered this statute as extending to them, it being certainly as applicable to their local situation on this side of the Atlantic as on the other, as the bloody records of the Massachusetts colony too horribly attest. We are to infer therefore, that the colonists of Maryland, in thus changing the punishment of the offence of sorcery from *hanging* to *burning*, meant to preserve the ancient mode of punishing this offence heretofore pursued by "holy church." Filled with this sentiment the minds of our first catholic colonial legislators would naturally be induced to consider *blasphemy* and *idolatry* also in a similar point of view. The "worshiping of a false God," or "a cursed or wicked speaking of him," would in their understanding of those offences merit the same fate. It is somewhat singular, however, that the accusations of their reformed fellow-subjects in England did not make our catholic colonists more delicate on the subject of idolatry. The protestant iconoclasts had long been in the habit of considering even the genuflexions of the catholics before the images and pictures of the son and the virgin, as gross idolatry.—The definition of *blasphemy* also left too much latitude to the malicious or prejudiced minds of the judge or the jury. The *protestants* of Maryland, however, when they subsequently came to legislate upon this last mentioned offence do not appear to have been much improved in their ideas of humanity. The boring of the tongue and the branding of the forehead is a punishment but a little less horrible to a mind of sensibility than the terrors of death.*

The next *bill*, entitled, "an act allowing book to certain felonies," seems to have been intended as a third chapter of their penal code. By this bill the following offences were to be adjudged felonies, but within the benefit of clergy.

* See the act of 1723, ch. 16; which never was *expressly* repealed. The 33d section of the declaration of rights, prefixed to the constitution of Maryland is supposed to have repealed it. But if it has, it is by a very obscure and remote implication, and to aid such a construction it requires, that the judge be a man of liberal ideas on religious subjects. There are abundant grounds in it for a bigot or a fanatic to hesitate in such a construction.

CHAP. II. "Manslaughter ;*—malicious trespasses, as to burn or destroy
 1689. wilfully a house, or stack of corn, or tobacco,—or to cut out another's tongue, and the like mischief done to another out of pure malice ;—forgery, which is the wilful embezzling or corrupting of a record ;—mere contempts with force, as to assault or beat the lieutenant general of the province, or to assault or beat any judge sitting in court,† or witness or juror in presence of the court ;—accessaries to felony after the felony committed, which is the receiving, hiding, or rescuing of a felon, knowing him to be one, (except it be the felon's wife ;) or the receiving stolen goods, knowing them to be stolen ;‡ *stealth of one's self*, which is the unlawful departure of a servant out of service or out of the colony without the privity or consent of the master or mistress.§

"Offender to suffer pains of death by hanging, except the offender can read clerk-like, and then he shall lose his hand, or be burned in the hand or forehead with a hot iron, and forfeit his lands at the time of the offence committed ; (saving to the widow her dower, and to the heirs his or her inheritance, if claims be made thereof within three years after judgment given,) and all his goods and chattles whereof he was possessed at the time of his conviction."—The second offence made capital.||

The reader will feel considerable indignation in recollecting, that such had been the abominable influence of the Romish clergy over most of the nations of Europe, that they had arrogated and maintained to themselves an exemption from any punishment annexed to the commission of crimes, but such as

* We perceive here considerable inaccuracy in the mode of legislation in these times. *Manslaughter* was undoubtedly included under the offence of *homicide* mentioned in the former bill. It may be supposed, therefore, that by the term *homicide* in the former bill *murder* was meant.

† This seems to explain and limit the description of the offence mentioned in the preceding bill,—“in sheding the blood of the lieutenant general or any judge sitting in court,” so as that the former bill should have relation only to *attempts to murder*.

‡ This did not, at the common law, make a man an accessary after the fact, unless he also received the thief ; nor does it appear clearly from the words of the bill, as above, that it intended to make the receiver of stolen goods an accessary, but liable only to the same punishment subsequently prescribed.

§ It must be acknowledged, that this is a singular description of the offence of a *runaway servant*. A servant here meant must have been those commonly called *indented servants*, imported at the expense of the master by payment of his passage, &c. on condition of serving him so many years. A passage in the *Digest*, of the Roman civil law, relative to fugitive slaves, seems however to warrant this mode of expression.—*Servus fugitivus sui furtum facere intelligitur*.—See Puffendorf Law of Nat. B. vi. ch. 3d, sect. 7.

|| Lib. C. and WH. p. 47.

their own ecclesiastical tribunals thought fit to impose. This privilege, originally annexed to their order by the ancient church, was not abrogated in England by the reformation. It had so interwoven itself with the common law of the realm, that a total abolition of even so odious an exemption became almost impossible. Hence, therefore, the extraordinary test, of a title of such privilege,—*legit aut non legit?* Can he read or not?—which illiterate christians, in the middle ages of their era, had deemed a sure criterion of such title,—was still used and practised at the time of the first settlement of Maryland, and, strange indeed to tell, continued to the commencement of the eighteenth century. It was no slight slur upon the aristocracy of the English realm, at the commencement of the reformation, that they, however, had sufficient influence to procure to *themselves* an exemption from this absurd test, by causing it to be inserted in the statute of 1 *Edw.* 6, ch. 12, that any peer of the realm should be entitled to the benefit of the clergy, “without any burning in the hand, *though he cannot read;*” thus confessing a shameful destitution of literary qualifications and at the same time evading the punishment of *burning in the hand*, which the temporal courts had contrived to exact from *laymen*, in order to designate such as should be guilty a second time of the same offence, to which a higher punishment was sometimes annexed. It was not till about the year 1707, that the statute of 5 *Ann.* ch. 6, was enacted, which finally abolished altogether this ridiculous test of a right to claim what was called, the benefit of clergy.

It may be further observable on the penal clause of this bill, that the alternative punishment on granting the benefit of clergy, in causing the offender, either “to lose his hand *or* be burned in the hand or forehead with a hot iron,” was intended to be so construed, as that “the loss of the hand” shall be annexed to those offences before enumerated in the body of the bill, to which by the common law or former English statutes such punishment was before annexed, as for instance, in the case of “assaulting or beating any judge, sitting in court;”^{*} and the “burning in the hand or forehead,” to be applied to such other offences therein enumerated, to which such punishment had been

^{*} By the common law at this day the assaulting a judge sitting in one of the courts of Westminster Hall, even by drawing a weapon, without any blow struck, is punishable with *the loss of the right hand*. 3 *Inst.* 140.—4 *Bl. Com.* 125.—It is questionable, however, whether the humanity of the age would not now require a royal pardon of this part of the punishment.

CHAP. II. usually applied in England.—The rule of construction,—*reddendo singula singulis*, a rule of grammar as well as law, seems to authorise it in this case.

1689.

The next bill, entitled, “an act determining enormous* offences,” seems to have been intended as a completion of their criminal code, cognizable in their *courts* of justice, by an enumeration of such offences, as those which either the common law did not provide against, or which the legislature desired more particularly to designate as objects of the common law jurisdiction, under the rank of offences denominated—*misdemeanors*. It is remarkable, however, that no punishment whatever is specified in the bill to any offence therein described. It was, most probably, intended by such omission to leave the punishment of the offences therein enumerated, to the legal discretion of the court, as misdemeanors commonly are in England. A peculiarity, which pervades the criminal code of our provincial legislature at this session, will have occurred, without doubt, to the reader, in observing a short definition annexed to every offence after its specific denomination. Such definitions in some instances, however, appear to have been intended rather as a limitation to the extent of the offence denominated, than as a general definition of it, as in the crimes of perjury and forgery mentioned in the two preceding bills, as well as in this against “enormous offences.”†—It will be observed also, that considerable anxiety is manifested in this bill, to bolster up the lord proprietary’s authority against any usurpation or assumption of power not derived from him, within his province; and the making the disobedience of his *ordinances* and *proclamations* punishable in his courts of justice, as a misdemeanor, would go far to establish them as of equal validity and obligation to legislative acts.—The interposition of the legislature, in holding out protection to the *Indians* from injuries to their persons or goods, deserves approbation.

A supplement to this early provincial code of criminal jurisprudence might here in regular order be noticed; but as it consists of those offences, which were vested in the cognizance of justices of the peace, whose authority and jurisdiction were specially provided for by another distinct bill, which seems more properly to fall under the arrangement of those provided for the

* Lord Coke explains the word—“enormous”—to mean—“horrible, exorbitant, *et extra omnem normam*.”—See 4 *Inst.* 281.

† See this bill at large in note (XXVI.) at the end of this volume.

erection of courts of justice, the consideration of it here, is, for **CHAP. II.**
the present, postponed to its proper place.

Although, as before observed, no material alteration was made at this session of 1638-9, in the *judiciary* department of the government from what it was before, yet it may be proper to take some notice of certain *bills*, among those before referred to, whereby a more specific arrangement of the courts of justice within the province appears to have been intended.

1639.

Laws for
erecting
courts of
justice;—
and first, of
a court of
admiralty.

The first of these, entitled, “an act for erecting a court of admiralty,” was in substance, as follows:—“judgment to be given agreeable to the law of this province, or (in default thereof) the judgments, which usually are or ought to be given in the same or the like causes by the custom or law-merchant of England, or in the admiralty court of England, as near as the said admiral, judge or judges, or commissioner or commissioners shall be able to determine.

“Fines and forfeitures of bonds or recognizances to be to the use of the lord proprietary.—Confiscations, derelicts, pirates, or enemy’s goods, goods found in or upon the sea, or within high water mark, (not having any owner challenging the same,) and all other profits and perquisites due or belonging in England to the high admiral of England, shall be to the use and profit of the said admiral, or (in vacancy of an admiral) to the use of the lord proprietary, except when otherwise granted.”*

Although it might at first appear, that a court of admiralty would not be necessary under the government of a colony, having only provincial jurisdiction, and not invested with complete sovereignty, but subordinate as to peace or war to the mother country, yet, situated as the province of Maryland then was, liable to what may be called private wars arising from its own peculiar local situation, such as not only skirmishes with the Indians, but also armed resistance of the laws by Clayborne’s party, and having its territories divided into two parts by a large bay, which might properly be deemed an arm of the sea, and *not within the body of any county*, especially as but one county had been then established, so that offences might frequently be committed on the waters of the province, which would be punishable according to the laws of England, there seems to have been some peculiar necessity at this time for such a tribunal as a court of admiralty. The lord proprietary, by the seventh sec-

* Lib. C. and WH. p. 9.

CHAP. II. tion of his charter, was authorized "to constitute and ordain
 1639. judges, &c., of what kind, for what cause, and with what power soever, within that land" (Maryland,) "and *the sea of those parts*, and in such form as the said now baron of Baltimore, or his heirs, shall seem most fitting."—In pursuance of this clause we find, that the lord proprietary had, in his instructions or commission to his brother Leonard Calvert, of the 15th of April, 1637, before stated, "nominated, constituted, ordained and established the said Leonard Calvert in the absence of us and our heirs, our lieutenant general, *admiral*, chief captain and commander, as well *by sea* as land of our said province of Maryland and the islands to the same belonging, and do by these presents give unto him absolute authority to do all such things as do belong or appertain to the office of a general, *admiral*, &c., to have, hold and enjoy and administer the same with such power and authority as any other lieutenant governor, general, *admiral*, &c. of any other province may, might, or ought by the law of arms to do." As the jurisdiction of the admiralty court in England appertained at this time to the office of lord high admiral, (for, the practice of putting the office in commission as of late years was not then used,) the governor or lieutenant general by the aforesaid commission would have been judge of the court proposed by this bill, and entitled to the perquisites of the office by virtue of the last clause of this bill.

County
courts and
their juris-
diction.

The next of these bills, (as they appear upon the records,) for the erection of courts of justice, is that entitled, "An act for the erecting of a county court."—It will be recollected, as before mentioned, that there was at this time but *one county* in the province, denominated St. Mary's. Although the isle of Kent, (the only part of the province as yet settled, besides that of St. Mary's,) contained at this time several settlements and inhabitants, yet it had not been hitherto erected into a county. But among the bills here referred to, prepared for the regulation of the courts of justice, there was one specially providing on that subject for that island; which bill was entitled, "An act for the government of the isle of Kent," which will be presently noticed in its place. The bill, "for the erecting of a *county court*," was of the following tenor.

"All causes of appeal from inferior courts; and all causes whatsoever *civil*, determinable in any court of common law in England; and all causes for recovery of legacies; and all causes

matrimonial, for as much as concerns the trial of covenants and contracts, and the punishment of faults committed against the same; and all offences of incest; attempting of another's chastity; defamation; temerarious administration; detention of legacies; clandestine marriage without banns thrice published, or bond entered in the court;* and all crimes and offences whatsoever, (not extending to felony or treason by the laws of this province,) for which any certain punishment is appointed by the laws of this province or by the common law of England, shall be heard and determined finally by and before the chief justice of the province for the time being, or by and before such other commissioner or commissioners as the lord proprietary or his lieutenant shall authorise.†

“The said court shall be a court of record, and shall be called a *county court*, and may exercise the same powers, &c., within this province, (in the causes aforesaid,) *as any of the king's courts of common law in England*, except where it is otherwise provided by any law of this province.

“Such forms of process and proceeding upon bill, plaint, information, presentment, or indictment, shall be used in this court as are most agreeable to the laws of this province, or otherwise to the forms used and observed in the courts of common law in England in the same or the like causes, as near as the judge or register may well know them, or otherwise such forms as the said chief justice shall appoint or approve to be used and observed.

“And in all pleas or matters, civil or criminal, (in this or any other court within the province,) the lord proprietary shall be allowed all the same and the like prerogatives and royal rights as are usually belonging to a court-palatine.‡ (Saving always the sovereign dominion due to the king of England.)

“And all issues of fact shall be tried by the said chief justice, commissioner or commissioners, and *the council sitting in court*, or the major part of them, if the defendants shall choose to be

* See note (XXVII.) at the end of this volume.

† This seems to be the first instance of power, expressly vested in the governor, of appointing *by commission* other persons to sit with him as judges, besides those of his council; and it appears to exhibit the first indication of the subsequent arrangement of the *supreme* court of the province under the denomination of the *provincial* court.

‡ It is not easy to determine from the manuscript words in the record, whether the above expression was meant to be, *court-palatine*, or *count-palatine*. In either case the meaning would be nearly the same.

CHAP. II. be tried by the court, or otherwise by a jury of *seven* or more
 1689. *freeholders* of the county to be returned by the sheriff, if the defendant shall choose to be tried by his country. And the register of the said court may at any time take a writ out of the chancery returnable into this court, directed to the sheriff to return any *five* or more *freemen*, (named upon the writ,) for a grand inquest, and after the impaneling the said inquest or any *five* of them, the court shall or may charge them with an oath, truly to inquire of and true presentment to make of all offences and misdemeanors whatsoever committed to their or any of their knowledge, or by vehement suspicion, public fame, or by information of any party upon oath, said or affirmed to be committed against the laws of this province, which presentment delivered into the court by the said inquest shall be an indictment of any party in any crime of felony or treason, (provided that such presentment or indictment be made or formed by a grand inquest of *twelve* jurors at the least,*) upon which such party presented or indicted may be put upon his trial in the *pretorial* court,† and likewise it shall be a conviction of the party presented of any other crime whereof he is presented, (the said crimes of felony or treason excepted,) upon which such party may be *censured*‡ for the said crime unless the party presented purge him or herself thereof by such means as the court shall appoint the party for his or her purgation.”§

“And such judgment shall be given in all causes of this court as is most agreeable to the laws of this province, or (in default of such laws,) to the judgments usually given in the same or the like causes in the civil court or courts of common law in England, as near as the judge shall be able to determine.

“And yearly on the first Monday in October, and afterwards monthly, till March, (inclusively,) shall be held a county court at St. Maries by the chief justice, or (in his absence) by any commissioner by the said chief justice appointed, or in default of a com-

* There seems to be a repugnance here between this and the former part of this clause, where the grand inquest might consist of five freemen. By the common law it is necessary, that *twelve* jurors at least, on the grand inquest, shall agree to a bill before it can be found. A bare majority of those present is not sufficient, unless such majority amount to *twelve*.

† This alludes to a supreme criminal court so denominated, and intended to be erected by another bill, the next but one to this for the county court, and which will be noticed in its place as we proceed.

‡ This, as before observed on another occasion, was a word then used as synonyms to *judgment* in a criminal case.

§ See note (XXVIII.) at the end of this volume.

missioner by the chief chancellor* of state at that time present at St. Maries.”†

CHAP. II.

1639.

Although the court here intended to have been created by this last bill, was denominated a *county court*, yet it may be inferred from the circumstance of its having an *appellate* jurisdiction in “all causes of appeal from inferior courts,” as also an unlimited jurisdiction over “all causes whatsoever *civil* determinable in any court of common law in England,” together with the jurisdiction properly appertaining to the *ecclesiastical courts* in England; that it was intended to have been the *supreme* court of the province, at least in *civil* cases. This is further confirmed by the last clause in the bill, which provides that the court shall be held “by the chief justice;” which office, by the commission of the 15th of April, 1637, as before mentioned, was vested in the lieutenant general or governor of the province.

The next of these bills, that provided for the judiciary department of the government was one entitled, “An act for the erecting of a court of chancery.” By this bill it was enacted, “that all matters and causes whatsoever determinable in the high court of chancery in England, and all matters and causes whatsoever *civil*, not provided for by any law of this province, and all causes whatsoever *civil*, (otherwise of right belonging to any other court within the province,) wherein the judge of such other court is a party, (except such other judge be lieutenant general of the province,) shall or may be finally heard and determined within the province by and before the chancellor of this province and council of state for the time being. This court of chancery hereby erected, to have the same form of proceedings as the court of chancery in England.”‡

Court of
Chancery.

By the commission of the 15th of April, 1637, the lieutenant general was at this time, (1639,) the chancellor of the province, with authority to call in the assistance of the council for their advice “upon all occasions as he shall see cause.” It appears to have been the usage throughout all the English colonies in America, in the West Indies as well as on the continent, that every English governor of every province or island was, by virtue of his commission, *chancellor* of the province of which he was governor, and personally discharged the duties of that office, sometimes solely, and sometimes with the assist-

* This word “Chancellor” is so in the record; but it would rather appear to have been intended as chief *councillor* of state.

† Lib. C & W H. p. 11.

‡ *Ibid.* v. 14.

CHAP. II. ^{1689.} ance and presence of his council, according to the directions of his commission or some special act of the province for that purpose.* In Barbadoes, Antigua, Montserrat, and South Carolina, the council sat as judges with the governor in the court of chancery.† In Jamaica the governor sits alone as chancellor.‡ In Maryland also, prior to the revolution, the governor sat alone as chancellor, from whose decision an appeal lay to *the governor and council*, (by act of assembly,) setting as a *court of appeals*.

A Pretorial court.

The next of these judiciary bills was entitled, "An act for the erecting of a *pretoriall*;"§ the tenor of which was as follows:—"That all capital crimes of treason and felony, (by the laws of this province,) and all *enormous* offences|| whatsoever by the laws of this province, shall be finally heard and determined by or before the lord proprietary or his lieutenant general and the *council of state* for the time being;—and the secretary of the province for the time being or other register appointed by the lieutenant general shall record all matters and proceedings in this court, and the said lord proprietary or his lieutenant general and the said council, secretary, or register, or any three of them, (whereof the said lord proprietary or his lieutenant general and secretary or register to be always two,) shall be a court of record, and shall be called the *pretoriall*, or the *pretorial* court.¶

"And such forms of proceedings and trial upon information, indictment, or appeal, shall be used and observed in this court as are most agreeable to the laws of the province, or otherwise to the forms used and observed in England in the same or the

* See *Stokes's View of the Constitutions of the British Colonies*, p. 185.

† *Ibid.* p. 191, 196.

‡ Edwards's *Hist. West Indies*, B. 6, ch. 1.

§ See note (XXIX.) at the end of this volume.

|| This must allude to that class of offences specified in the bill before stated, entitled, "An act determining enormous offences."

¶ I do not find any subsequent mention in the records, of any court, within the province, after this bill or act of assembly, ("for the erecting of a pretoriall,") under the same denomination. It would seem, as if our colonists considered the word *pretorial* as synonymous to the word *provincial*; and although the *pretorial* court hereby erected was intended to be entirely a *criminal* court, yet, as the lieutenant general and council were constituted the judges of it, and as they were also, by the commission of the 15th of April, 1687, before mentioned, judges also of the supreme civil court under the denomination of the county court, as before stated, the two several jurisdictions, exercised by the same judges, became in process of time identified, under the denomination of the *provincial court*; for the establishment of which, under that denomination, no act of assembly was ever expressly made. This may be fairly inferred from the subsequent act of assembly of 1642, ch. 8, entitled, "An act for judges;" which will be remarked upon in its proper place.

like causes as near as the said court shall be able to judge, or otherwise such forms as the said court shall appoint or approve to be used and observed, in cases not provided by the laws of the province. CHAP. II.
1639.

“And all *enormous offences* aforesaid shall be tried by the said court, and all capital crimes of treason or felony shall (upon an indictment by a grand inquest) be tried by a jury of twelve free-men to be returned by the sheriff.*

“And any lord of a manor indicted of any capital offence shall be tried by the said lieutenant general and by twelve or more lords of manors, (if there be so many within the county capable of such a charge,) or in default of so many lords of manors, then by so many lords of manors and freeholders of the county, (to be returned by the sheriff,) as shall make up the number of twelve at the least. And the said lords of manors and freeholders empannelled shall be called and judged his peers; and conviction shall be by the said lieutenant general and the said peers, or the major part of them, agreeing in their verdict.†

“And such judgment shall be given in all crimes and offences

* It would appear from this clause, that the *trial by jury* was not to prevail in criminal cases, except in those for treason and felony; and that persons indicted for those offences before enumerated, in the bill against “enormous offences, were to be tried *by the court*, without the intervention of a petit jury, the court being judges of both the law and the fact. Something like this has been lately instituted in the State of Maryland by an act of assembly, which authorises the court in minor offences, such as assaults and batteries, to determine *with the consent of the defendant*, the fact as well as the law.—Thus the leaders in a democracy, as well as the rulers in a monarchy, can sometimes slyly take power out of the hands of the people.

† This is a strong proof, among many other instances in our early records, that it was the intention of the first lord proprietary, and those first concerned with him in the government of the province, to have instituted therein an order of nobility, as he was expressly authorised to do by the fourteenth section of his charter. Although many manors were laid out and granted within the province by the lord proprietary, yet it no where appears on our records, that any peculiar privileges, such as appertain to peers of the realm in England, were ever claimed or at least enjoyed by the grantees of such manors. It may be conjectured, that the unlucky insertion of the clause,—“So that they” (to wit, the titles and dignities to be conferred) be not such as are now used in *England*,”—in the same section, spoiled the appetites of our first planters in Maryland for hereditary titles. That they always possessed a desire for hereditary honors and distinctions is evident from the excessive anxiety often manifested by them, as well as their fellow colonists of Virginia, to transmit the title of *colonel* of militia from father to son; and a governor of Maryland has been known to grant a commission of *colonel* to a wealthy planter merely because his father and grand father had enjoyed the same title, although there was not at that time any militia organized in the province. The revolution, alas! has not quite extinguished all our fondness for these things.

CHAP. II. whatsoever capital within this province, as is most agreeable to
 1639. the laws of this province; and such judgment shall be given in all enormous offences as the said lord proprietary or his lieutenant general and council, or the major part of them sitting in court shall think the misdemeanor, offence, or contempt, to deserve, for the correction of the delinquent, or the recompense of the party grieved, so that it extend not to the taking away of life, or member, and so that no fine, to the use of the lord proprietary, shall be levied upon judgment given in the court to above the fourth part of the clear personal estate of the party censured, or of the value thereof, according to a true and perfect inventory thereof to be made and appraised upon oath by two freemen of the county indifferently chosen by the sheriff, and entered in the record of the said court.”*

The authority of justices of peace, and their jurisdiction over certain specified offences.

In further provision for the administration of justice, the legislature proceeded to regulate the inferior branches thereof by a bill entitled, “an act for the authority of justice of the peace;” which appears to have been intended not only to confirm to them the common law duties of a justice of the peace as in England, but also to create certain specific offences not known in the common law, or to vary the punishments annexed to such offences as that law prohibits, and to vest in every single justice of the peace a summary jurisdiction over every such offence. The bill also appears to have considered the governor and each of the council, as justices of the peace, in virtue of their commissions; for it enacts,—“That these offences following in this act may be heard and determined *by the lieutenant general* for the time being or *by any one of the councill* or *by any one having commission for the peace* under the great seal of this province.”

The uncommon offences, created by this bill, or in which the punishments annexed thereto by the common law, were varied, were :—“Withdrawing of one’s self out of an English plantation to inhabit or reside among any *Indians* not *christened*, without consent of the lord proprietary or his lieutenant general, and the offender shall be imprisoned until he shall find security to perform the order of the judge therein.

“Swearing, which is the prophane adjuration by God or some holy creature, and the offender shall be fined five pound of tobacco or one shilling sterling to the lord proprietary.†

* Liber C. and WH. p. 15.

† Our cotemporary colonists in New England, about this time, always so ingenious in their *notions*, invented a more uncommon punishment for *swearers*

“Drunkenness, which is drinking with excess *to the notable* CHAP. II.
*perturbation of any organ of sense or motion,** and the offender 1639,
 shall forfeit to the lord proprietary 30lb. of tobacco, or five shil-
 lings sterling, or *otherwise shall be whipped*, or by some other
 corporal shame or punishment corrected for every such excess at
 the discretion of the judge.†

“Fornication, which is unlawful copulation between parties
 not married, and the offender or offenders *shall be publickly*
whipped, or otherwise pay such fine to some publique use as the
 lieutenant generall and councill shall impose.

“Adultery, which is unlawful copulation where one partie is
 married, and it shall be punished as fornication, but with a *more*
painful whipping or grievous fine.‡

than that prescribed above.—“Robert Shorthose, for *swearing* by the blood of
 God, was sentenced to have his tongue put into a cleft stick, and to stand so for
 the space of half an hour.” *Hutchinson's Hist. of Massachusetts*, vol. 1, ch. 5.

* This definition or rather description of drunkenness would comprehend a
 greater number of *gentlemen grog drinkers* in Maryland of the present day, than
 the diagnostics of the disease or offence laid down by writers on the common
 law. *Dalton*, in his *Justice of the Peace*, (a book of considerable authority, and
 first published but a few years prior to the first emigration of the Maryland colo-
 nists,) after stating the statutes of *James* relative to this offence, thus gives the
 rule for their construction.—“Now, for to know a drunken man the better, the
 scripture describeth them to stagger and reel to and fro,—*Job*, 12, 25. *Isaiah*, 24,
 20. And so where the same legs, which carry a man into the house, cannot
 bring him out again, it is a sufficient sign of drunkenness.”

† These two clauses, relative to *swearing* and *drunkenness*, seem to have been
 partly copied from the English statutes of 4 *Jac.* 1, ch. 5, and 21 *Jac.* 1, ch. 7,
 and ch. 20, in force at that time in England. The punishment of drunkenness
 prescribed by our act, in one respect, exceeded that of the English statute,
 which directed only, that they should be put *in the stocks*, but not *to be whipped*
 as in our act, upon non-payment of the fine.—The quotation of the above clauses,
 however, is principally of use to shew the relative value of tobacco and money
 at this time in the colony. If, as we may suppose, the legislature intended, that
 the fine, whether in tobacco or money should be nearly the same, thirty pounds
 of tobacco at five shillings would be about two pence per pound, a price nearly
 at which it continued in England to the time of our revolution.

‡ Although it seems to be laid down by Mr. Justice *Blackstone*, (4 *Bl. Com.*)
 that neither of these offences—fornication or adultery were, either by the com-
 mon or statute law of England, punishable as *temporal* offences, unless in case
 of the former, *bastardy* ensued; yet it is probable, that our provincial legislature,
 at this time, thought otherwise; and the cotemporary construction of the 18
Eliz. c. 3, to which he refers, authorising *corporal punishment*, in case of *bastar-*
dy, without its being expressly so directed by the statute, seems to corroborate
 the opinion of our provincial legislature. The true construction, however, of
 our act as above, would appear to be, that the punishment of *whipping* was to be
 inflicted only in case of non-payment of the fine; agreeably to an old maxim,—
Qui non habet in ære, luet in corpore. Subsequent acts of assembly, upon this
 subject, seem to warrant this construction.

CHAP. II. “Masters or mistresses refusing to give their servants necessary or convenient food, lodging, or clothing, or to perform such covenants for wages or otherwise, as they are bound to do by their indentures or the law of the province; and the offender shall be imprisoned till he or she find sureties to perform the order of the judge therein; and the party offending or convicted the second time shall lose his or her right and benefit of the indentures, and of the law or custome of the country, and the servant shall be set free, except the master do appeal to the county court.

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“Servants refusing to perform the lawful commands of their masters or mistresses, or of their assigns or overseer, or neglecting to do the labour which they ought to do, or unjustly complaining against their master or mistress, or offending any otherwise against their duty or indenture, and the servant so offending shall be publickly whipped or otherwise corrected at the discretion of the judge.

“Working in servile labour upon the Lord’s day, or other holy days published aforesaid in the church to be kept as holy, without case of necessity to be allowed by the judge; and the master or mistress, or other freemen, offending therein, shall forfeit 30 lb. of tobacco, or 5s. sterling, for his own default, and 30 lb. of tobacco or 5s. sterling more for the fault of every his servants offending by his command or consent.*

* Although the number of Saint’s day, which had been prescribed by the Catholic church to be kept as “holy-days,” had increased so as to become a political evil to the community, yet the Church of England, at the reformation, did not entirely extinguish them. By the statute of 5 and 6 *Edw.* 6, ch. 3, entitled, “an act for the keeping holy-days and fasting-days,” after a disavowal of the observance of holy-days, “for any of the saint’s sakes, whose memories are had on those days,” the particular days, besides Sundays, which were to be kept as holy-days, and on which bodily labour was to be abstained from, were specified, as also the particular days to be kept as fasting-days, confirming what had been before enacted on that subject by the statute of 2 and 3 *Edw.* 6, ch. 19, which the reader will find commented upon in the next note.—Also, by the 13th canon of the Church of England it was prescribed, that “all manner of persons, within the Church of England, shall from henceforth,” (the time of making these canons was in the reign of James the first, in the year 1603,) “celebrate and keep the Lord’s day, commonly called Sunday, and *other holy-days*, according to God’s holy will and pleasure, and the orders of the Church of England, prescribed in that behalf.” The holy-days enumerated in this statute of 5 and 6 *Edw.* 6, were probably the holy-days referred to in both the canon here cited and the above mentioned bill. The statute of 3 *Car.* 1, ch. 2, also provided “for the further reformation of sundry abuses committed on the Lord’s day, commonly called Sunday.”

“Eating flesh in time of lent or on other days, (Wednesdays CHAP. II.
excepted,) wherein it is prohibited *by the law of England*, with- 1639.
out case of infirmity to be allowed by the judge; and the offender shall forfeit to the lord proprietary five pound of tobacco or one shilling sterling for every such offence.*

“Shooting off three pieces in the whole within half a quarter of an hour one of another, (either by a single person or in answer to another,) without cause of alarm, or not answering an alarm by three pieces;—offender to forfeit to the lord proprietary 10 lb. tobacco for every piece so unlawfully shot off, and 20 lb. of tobacco for not answering an alarm.

“Fishing at the creek in St. George’s hundred, commonly called the Herring creek, with sceyne or other unlawful net; and the offender shall forfeit his net or sceyne to the partie complaining thereof.†

“Provided, that if any offender be questioned for any of these offences in the admiraltie court, or county court, or before a justice of peace, that then such offender shall not otherwise be questioned or punished for the same, than in such court, which first questions the offender.—This act to continue till the end of the next general assembly.”‡

Supplementary to the foregoing bills relative to the *judiciary* Inferior
department of the government there was another providing for executive
the *executive* branch of the administration of justice, entitled, officers.
“an act for the appointment of certain officers;”—viz: a *tithing-man* in each manor, a constable in each hundred, a sheriff and coroner in the county, and a *public executioner* for inflicting all corporal correction and punishment.

The mode of appointing a *tithing-man*, prescribed by this bill, deserves some notice, inasmuch as it tends to corroborate

*See note (XXX.) at the end of this volume.

†This clause in the above act clearly demonstrates, what was the sense or opinion of those at the head of the government of Maryland at the time of its first colonization, relative to the *saving* clause of the sixteenth section of the charter, which has been supposed to reserve to every inhabitant of the province, and consequently to every citizen of the state, a free right, not only of fishing in all the navigable waters of the Chesapeake and its tributary streams, but also of landing on the shores and soil of any private individual, for the purpose of hauling his seine and securing his fish. Had this right been thus reserved by the *charter*, the provincial legislature could have had no power to make any law contrary thereto, and the above clause would consequently have been null and void.—See this subject before touched upon in the corrections and additions” to the introductory part of this work, vol. 1. p. 251.

‡Liber. C. and WH. p. 18.

CHAP. II. the supposition, that it was the original intention of the proprie-
 1639. tary to vest in the lords of manors, to be erected in the province, privileges and powers analogous to the lords of manors in England.—“That the lord of every manor within this province, (after any manor shall be erected,) shall yearly at the first court baron held after Michaelmas in any year nominate and appoint some inhabitant of the manor, (not being of the council,) to be tithing-man of that manor, to have the same power as a tithing-man in England.”—The duties of a tithing-man in England were, at this time, nearly the same as those of a *petty constable*. They were usually chosen by the jury at the court leet,—a criminal court appertaining to a manor.

The appointments of *constables* of hundreds were thus provided for.—“And the *commander* of every hundred,* or otherwise (if there be no commander,) the lieutenant general of the province for the time being, shall, yearly at the first hundred court† in every hundred held after Michaelmas in any year, nominate and appoint some inhabitant of the hundred, (not being of the council,) to be high constable of that hundred, who shall execute all precepts and warrants to him directed, and shall in all things have the like power and authority within the said hundred, as a *high constable of any hundred in England* hath or ought to have within his hundred *by the law or custom of England*.”—A refusal to serve incurs a forfeiture of 500 lb. of tobacco.

“The chief judge of the county court shall nominate and appoint any inhabitant, &c. (not being of the council,) to be *sheriff and coroner* of the county, to have in all things the like power and authority within the county as a *sheriff or coroner of any shire in England* usually hath or ought to have *by the law or custom of England*.—Penalty on refusing to serve 2000 lb. tobacco.‡

* These *commanders* of small districts in Maryland were officers unknown to the common law of England, and borrowed from the same denomination of office used in Virginia. See it explained before in a note in p. 44.

† In the legislative arrangement of the courts of the province, prior to this period, I do not find any explanation of or provision made for the court here called a “hundred court;” except on the isle of Kent; nor is it easy at this day, to ascertain either its *origin* or *jurisdiction*. From the above bill the *commander*, who seems always to have been intended to act as a *deputy* of the lieutenant general, was the *judge* or *one* of the judges thereof. He was expressly so designated in the bill next mentioned “for the government of the isle of Kent.”

‡ These clauses serve to illustrate the manner in which the laws of England, both common law and statute, were first introduced into the province.

“And the said sheriff shall choose *one of his servants*, (and in case he hath no servant to accept thereof the lieutenant general and council shall appoint some person,) for the execution of all corporal correction, shame, or other punishment to be inflicted on the body or person of any one; and if the person so chosen and appointed by the lieutenant general and council shall refuse to execute the said office, the lieutenant general upon complaint thereof made unto him shall or may censure the person so refusing by corporal shame or correction as he shall think fit.”*

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Having thus provided for the administration of justice in that part of the province where the seat of government was fixed, the legislature proceeded to make provision for the like purpose in the isle of Kent, the only part of the province where any inhabitants appear to have been settled at this time, detached from the colonists in St. Mary's.† Accordingly there appears among these bills of this session one entitled, “an act for the government of the isle of Kent.”—Although a *general* provision was made in the fifth and sixth sections of the act of 1638, ch. 2, for the administration of justice in the isle of Kent, as before stated, yet as those sections treat the subject in a very loose and indefinite manner, there appears to have been an absolute necessity for some more specific and minute arrangement thereof. This seems to afford some additional proof of the truth of the supposition herein before made, that this act of 1638, ch. 2, was intended as an abridgment of those bills, which, although not finally passed, yet were to be considered as explanatory or directory to more general expressions in the act. By this bill the isle of Kent was to be erected into a *hundred*, and called Kent hundred; which hundred was to be considered as being

The administration of justice in the isle of Kent regulated.

* The above bill is recorded at large in *Liber C. & WH.* p. 21.—The last clause of this bill, as above, is without doubt justly exceptionable, and the power of compelling *a man of credit and character* to perform the office of hangman or public executioner, ought not to have been placed in the hands of even the governor of the province. The act, however, would appear to admit of the construction, that none but persons of the degree of “a servant,” were to be appointed to such an office. This principle was again reiterated in another act (1641, ch. 5,) much to the same purport, and, as we shall see in its place, received the pointed reprobation of captain Cornwaleys, the most influential man in the government of the province at this time.

† Although some inhabitants are mentioned to have been settled by Clayborne at the mouth of the Susquehanah, at the time of the first arrival of the first Maryland colonists under Calvert, yet there does not appear on the records of the province for several years after that arrival, any legislative or other notice of any inhabitants there settled.

CHAP. II. *within the county of St. Mary's*, until another county should be erected on the eastern shore. A court of record also was thereby erected, to be called—the Hundred-Court of Kent; of which the commander of the said island was to be the judge, and from which court an appeal lay to the county court at St. Mary's. Provision was also made therein for the supreme court at St. Mary's to sit occasionally on the isle of Kent, apparently in the nature of a court of assize.*

Oaths of
office pre-
scribed.

A few additional observations are to be made on the fifth and sixth sections of this act of 1638, ch. 2, before stated. It is observable, that those sections require the lieutenant general and each of the council to take *an* oath,—the former, “to administer equal justice to all persons, without favour or malice of any one;”—the latter, “to defend and maintain the rights and prerogatives of the lord proprietary in all things, and to assist the execution of justice without favour or malice of any one, and to do all other things as becomes a councillor to do.” But although the *substance* of these oaths is here stated, yet no particular *form* of an oath is therein prescribed to either. There is strong evidence, however, to induce us to believe, that the oaths of office, here prescribed, were to be taken according to the *forms* prescribed in one of the bills of this session, entitled, “an act for the several oaths to be taken by judges and public officers.” Agreeably to this, we find, that at a court holden at St. Mary's, on the 20th of March, 1638, (1639, N. S.) the day after the assembly of this session rose, oaths of office were taken, manifestly according to the forms prescribed in this last mentioned bill, as appears from the following entry:—“The governor authorised the secretary to administer an oath to him for the equal administration of justice, &c.—Then were sworn captain Thomas Cornwaleys, esq., Mr. Giles Brent, gent., Mr. John Lewger, gent., in the *form* appointed for a councillor to take *upon the same bill*. Then was sworn the said John Lewger in the oath appointed for the secretary. Then was chosen and sworn for sheriff and coroner, Thomas Baldrige for one year. Then was chosen for treasurer of the province, Mr. Giles Brent. Then the governor authorised the secretary to administer to him the oath of allegiance, &c.;”† which *oath of allegiance* was therein expressly to be according to another bill of this session,

* See note (XXXI.) at the end of this volume.

† “Council Proceedings from 1636 to 1657,” p. 40.

entitled, "an act for swearing allegiance," which has been before stated and commented upon.* The oaths of office, therefore, to be taken, were manifestly also those prescribed by the other bill relative to "judges and public officers." In further corroboration of this, we find the following entry, under the date of April 15th, 1643:—"James Neal had the oath of a councillor of state administered to him by the said Giles Brent, according to the form of a bill drawn up in assembly, 15th of March, 1638, entitled, an act for the several oaths to be taken by judges and public officers."† This reference can be applied to no other bill than one of the thirty-six bills before mentioned of this session, under the same title.‡

The principal use of our notice of this subject is to adduce a very strong proof, that these thirty-six bills said to have been "twice read in the assembly, engrossed, but never passed," were notwithstanding considered as laws obligatory, in some measure at least, on the people of the province, and appearing to have been in several other instances, besides the one here cited, received and acted under as *laws of the province* in force. From the tenor of the fifth rule or order of the house, before stated, if a bill was "engrossed" after a second reading, and nothing more done with it, it could not be said to be "utterly rejected," the expression in the rule being in the alternative—"engrossed or utterly rejected." This, indeed, is consonant to modern parliamentary usage.§ It does not appear, therefore, that these bills were neglected and *not passed* on account of their demerits or any specific objections to them by the house. Some cause thereof operated at the time, but of what nature, it would be improper to hazard conjectures.

Supplementary to the foregoing arrangement of courts of justice and the necessary officers attendant thereon, some short notice may be here taken of the mode or *practice* prescribed by one of the bills of this session "for recovering of debts" in those courts.

By the bill entitled, "an act for recovering of debts," it was enacted, "That the *complainant* in any action of debt upon booke

* See before p. 110.

† See the record-book in the council chamber, entitled, "Council proceedings from 1636 to 1657," p. 99.

‡ See the forms of these oaths as in the bill or act above mentioned, in note (XXXII.) at the end of this volume.

§ 1 Bl. Com. 188. Jefferson's Manual, sect. 31.

CHAP. II. or accompte shall or may sue his booke or accompt at the first
 1689. county court or at the hundred court of Kent, in October, or at any time after.

“And the *complainant* in any action of debt, after his action entered in the booke of the register of the said county or hundred court; and after *such caution given* for prosecuting of the cause, and performing the sentence of the court to be therein given, (as shall be reasonably desired of him,) shall or may have a precept under the hand of the register of the hundred court of Kent, or otherwise a *writ out of the chancery* directed to the defendant,* containing the whole tenor or effect of the plaintiff’s bill, and commanding the said defendant to underwrite his *answer* to the said *bill*, and to bring or send it so underwritten into the said county or hundred court, or to deliver it to the plaintiff, or to come to enter his *answer* in the register’s booke, (within a reasonable time limited,) or otherwise to be at the next county or hundred court, (naming the certain time and place,) to make answer to the said *bill*, and to bring with him his witness, accompts, and all muniments necessary for his defence upon pain of having judgment proceed against him at the said court in punishment of his contumacy.”

It will be perceived from these clauses, that the *practice* of these courts in all *civil* cases, especially for the recovery of debts, was intended to be assimilated more to that of the *court of chancery* in England, than to the practice of a court of common law. The peculiar situation of a colony, in its infant state, might possibly justify this departure from the English jurisprudence; but it is observable, that even at this day in the state of Maryland, a summary mode of trial is prescribed by law in the cases of *small debts*, and judgment therein to be given “according to the laws of the land, and *the equity and right of the matter*.”

The act then, after several clauses, providing for the attachment of debts in the hands of the defendant’s debtors,—regulating the service of “precepts and writs,”—also, the mode of trial, wherein the *wager of law* is expressly allowed to the defendant, and prescribing general directions to the sheriff relative to executions, has this singular clause:

“And where there is not sufficient distresse of goods, the *par-*

* It is proper to observe here, that agreeably to the ancient practice in England, the beginning or foundation of every suit in a *civil* case was a writ, called an *original* writ, taken out of the *court of chancery*—the shop or mint of justice, wherein all the king’s writs were framed. 3 Bl. Com. 272.

tie himself, or any his servants attached, shall be either *sold at an outcry*, or otherwise *his service valued* and appraised by the month as before,* and *delivered in execution* to the partie or parties recovering, according to the several proportions of their recoveries *to be his or their servant* so long as *until the execution be satisfied*, according to the rate of the parties or servant's labour appraised as before; and the greatest creditor recovering shall have first execution upon the body of such partie or servant attached, and so the rest in order according to the value of the debts recovered."†

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1639.

Although the power vested by this clause in the creditor over the person of his debtor, compelling him to a temporary service in discharge of his debt, would sound harsh to the ears of a modern republican, yet it was in reality nothing more than the hardship, to which the adventurous emigrant, (the "servant" liable to execution by the act,) voluntarily entered into, when he executed an indenture, by which he stipulated to pay the expenses of his transportation from Europe to America, by a service for a specified number of years. So the thoughtless or fraudulent debtor, when he voluntarily contracted his debts, knowing the law upon the subject, might be said to have voluntarily also subjected himself to a similar hardship. It was not *slavery*, for that is a term properly applied to a service for life, arising from their condition *by birth*, and applicable to none in Maryland but negroes.‡ It must be acknowledged, however, that fraudulent artifices might be used by an artful creditor to inveigle a simple or ignorant man into his debt, with a view of drawing him into his bondage, and laws should not open a door to such oppressive practices. The right of a creditor to compel his in-

* The preceding clause directed, that "where an execution was served upon one's servant or other goods, &c., they should be sold at an outcry, or otherwise appraised and valued upon oath, and delivered to the plaintiff at their valuation."

† Taken from Liber C & WH. p. 38.

‡ This distinction seems to be explained by the learned English annotator (Dr. Harris,) on *Justinian's Inst.* (Lib. I. Tit. III. sect. 4.) *Quibus modis servi constituuntur.*—"Although absolute slavery, says he, "is now disused in Europe, yet a species of servitude is allowed among us, which is justifiable; thus, an apprentice is bound for a certain time, and for particular purposes, and men of full age may also, by contract, bind themselves for a maintenance either for years, or for life. But such a contract, made by the ancestor, is merely *personal*, and can by no means oblige *his posterity*. It must be added, that a person, bound to another for a term, does not labour under any civil capacity, but is entitled to all the legal privileges of other men; and in this, his condition is widely different from that of an absolute slave."

CHAP. II. solvent debtor to compensate him for his debt by *personal service*

1689. has been, through all ages, a *vexata questio* in the science of legislation, and the duty of a historian does not here require a discussion of it.*

Officers for the probate of wills, and granting administration. Sect. (7.) "The secretary shall prove wills, and grant administrations, and use, &c., all power, &c., necessary thereto. And the commander of Kent to take order for the saving of the goods of deceased persons within that island, till a will be proved or administration granted."

Mr. John Lewger had been by his commission of the 24th of January, 1537, (old style,) appointed "commissioner in causes testamentary," as before stated. His powers and jurisdiction, under this act as well as under his former commission, were probably similar to what subsequently appertained to the office of commissary general of the province; while the power and duty of the commander of Kent, in respect to the estates of deceased persons on that island, seems to have been only that of one to whom letters *ad colligendum* had been granted, accountable therein to the secretary as supreme *ordinary* of the province.

Under this head may be arranged the *bill* of this session, entitled, "An act for succession to goods;" which seems to have been framed, in most parts of it, in conformity to the law of England on this subject, as it existed at this period of time; except in one particular, wherein our colonial legislature appears to be entitled to the honour of having anticipated the equity and justice of the English statute of 22 and 23 *Car.* 2, c. 10, commonly called the statute of distributions. It is known to lawyers, that prior to the statute of distributions an executor or administrator, after paying all the legacies and debts of the testator or intestate, might retain the whole of the *surplusage* of such testator's or intestate's personal estate to his own private use, nor could he be compelled by the ordinary or any court of law to make a distribution of such surplusage among the next of kin. A remarkable hardship of this kind, occurring between a brother and sister, about the year 1666, (18 *Car.* 2,) in which Sir *Walter Walker*, an eminent civilian, was counsel, he had in-

* This right of a creditor to the service of his debtor existed under the Athenian government, until such right was abolished by Solon, as being inconsistent with the Athenian democracy. The Roman *republic*, however, engrafted it into their *twelve tables*, most of the articles of which were said to have been borrowed from Greece. But one or two horrible instances of cruelty, practised under this right, occurring at Rome, the people would no longer bear it, and that part of the twelve tables was repealed or altered.

fluence enough, shortly afterwards, to get the statute of 22 and 23 *Car. 2*, c. 10, passed, to remedy the evil.* But our colonial legislature, in the year 1639, had done this in *substance* before them, by the before mentioned bill, “for succession to goods;” which provides, that “if upon the accompt of the administration there remain any goods of the deceased intestate, (after funeral expenses, debts, and other charges defrayed,) such *remainder* shall be divided into two moieties, whereof one moiety shall be allowed to the widow of the deceased intestate, and the other moiety to the child or children of the deceased,” &c.† and so on, nearly as is directed in the statute of 22 and 23 *Car. 2*, except, as will be perceived, our act gives a *moiety* to the widow, but the statute only a *third*. CHAP. II.
1639.

Sect. (8.) “The captain of the military band, (at the direction of the lieutenant general,) shall use, &c., all power, &c., necessary or conducing in his discretion to the safety or defence of the province. And the commander of Kent to do the like within that island.” Military discipline.

A bill of this session, entitled, “An act for military discipline,” seems to have been intended to carry into effect the details of the above general clause. As it is the first *militia law* of the province, now extant upon record, the insertion of it here may perhaps gratify the reader’s curiosity.‡

Sect. (9.) “All officers’ fees to be paid *according to a bill upon the records of this assembly*: and all necessary public charges to be defrayed by the *treasurer* of the province, upon account of the colony or province, by warrant from time to time from the lieutenant general and council.” Payment of officers’ fees, and public charges provided for.

We see here in the first clause of this ninth section an express reference to one of the thirty-six bills before mentioned,—“engrossed but not passed, to wit, the one entitled “An act for fees.” This seems to carry with it an undeniable proof, that in the estimation of the members themselves of this assembly at this session, these bills, thus “engrossed but not passed,” were nevertheless to be considered as *explanatory* and directive to the general precepts and provisions of the act passed. Indeed, the *title* of the act, to wit, “An act ordaining *certain laws* for the go-

* See the case of *Hughes vs. Hughes*, *Carter’s Rep.* 125; and also 1 *Lord Raymond*, 574, and 2 *Bl. Com.* 516, where it is said, that the statute of distributions was penned by Sir *Walter Walker*.

† *Lib. C.* and *WH.* p. 34.

‡ See note (XXXIII.) at the end of this volume.

CHAP. II. vernment of this province," might bear the construction, of an
 1639. allusion to *other laws* not comprised within the body of the act.

The latter clause of this section seems to be further explained by another of the before mentioned bills, entitled, "An act for the common defraying of certain public charges." By this bill "the charges of all expeditions against Indians and other enemies, or rebels, (thought necessary by the lieutenant general and council,) were to be levied upon all the inhabitants of the province rateably to their *personal estates*, in such manner, and after such proportions, as the general assembly, or lieutenant general and council should rate and tax the same."* From which it would seem, that *real* property or lands were not considered by the members of this assembly as forming a proper object of *direct* taxation. This might possibly be owing to the consideration, that such lands of the province, as were already granted, were sufficiently burthened by the annual payment of a quit-rent to the lord proprietary. The allusion also, in this bill, to "expeditions against Indians," indicates disturbances and hostilities of those savages, with whom our colonists were now on the eve of a war.

Derelict
property;
directions
concerning
it.

Sect. (10.) "If any goods be within the province without any challenging the same, and having right thereunto, the lieutenant general and council shall appoint, how the same shall be employed."

It will be recollected, that by the law of nature as well as the Roman civil law, whatever moveables are found upon the surface of the earth, or in the sea, and are unclaimed by any owner, are supposed to be abandoned by the last proprietor; and, as such are returned into the common stock and mass of things; and therefore they belong, as in a state of nature, to the first occupant or fortunate finder. The common law of England was the same, unless such goods or moveables fell within the description of waifs, or estrays, or wreck, or hidden treasure; for these are vested by that law in the king,† and consequently in the lord proprietary in Maryland, by virtue of his palatinate *regalia*. It may be supposed, therefore, that this section of this act was made to take away any uncertain right of an *occupant* in such cases, yet to leave it in the power of the governor and council to permit such occupant to retain the goods, where the

* See this bill abridged in Bacon's laws.

† 2 Bl. Com. 402.

peculiar merit of such occupant might appear to entitle him to them. This clause, it would seem, did not extend to *lands*, although no owner might appear to “challenge the same ;” besides being confined to *personal* property by the word “goods,” a particular provision was made at a subsequent session, as we shall see, “concerning deserted plantations.”

Sect. (11.) “Where the goods of a debtor sued are not sufficient to pay all his debts within the province, they shall be sold at an outcry, and distributed equally among all the creditors inhabiting within the province ; except that the mere and proper debts of the lord proprietary shall be first satisfied, and then fees and duties to public officers, and charges ;* and that debts for wine and hot waters be not satisfied till all other debts be paid.”†

Sect. (12.) “Every person planting tobacco shall plant and tend two acres of corn.”

Although the rulers of the mother country, (particularly king James,) had done every thing in their power to discountenance the growth of tobacco in Virginia and the adoption of it as a staple product of that colony ; which policy had been continued by his son Charles ; yet, through want of some other means for the acquirement of wealth, and indeed for the procurement of those articles of English manufacture necessary for their comfortable subsistence as well as the cultivation of their crops, the growth of tobacco had been persisted in by the colonists of that province in spite of all opposition. This process of agriculture, like many other of the customs and habits of that elder colony, was adopted by the Maryland colonists very soon after their first settlement at St. Mary’s. But as corn was essential to their existence, it seems to have been much apprehended by the government of Maryland about this time, that the colonists might experience considerable distress from the want of that necessary article of food, especially as the Indians, from whom they were in the habit of purchasing considerable quantities of it, began now to exhibit some symptoms of hostility. It was, therefore, deemed prudent policy to encourage the growth of corn, even at

A short insolvent law.

The planting of tobacco and Indian corn regulated.

* The “charges” here referred to most probably meant the “public charges” provided for by the bill of this session, before mentioned, for that purpose.

† It may be pardonable, perhaps, to observe here, that this legislative frown, (if we may so call it,) upon the excessive use of spirituous liquors, might be copied by our state legislature of the present day. The pernicious effects of our modern “hot waters,” such as rum, brandy, and whiskey, on the morals as well as health of the people of this state, are beyond all calculation. They not only generate idleness, but thin the population of the country.

CHAP. II. the expense of checking that of tobacco. In explanation of this

1639. clause in this act, it may be proper to state here also the substance of one of the bills of this session, entitled, "an act for planting of corn;" by which it was directed, that "every person planting tobacco was yearly also to plant and tend two acres of corn for his own food, and two acres of corn more for every person in his family planting tobacco, under the penalty of five barrels of corn, or other commodities to the value thereof, for every two acres of corn wherein he shall make default."*

Weights
and mea-
sures regu-
lated.

As the measurement of corn, when made, has a natural connection with the planting or growing of it, it will be proper to take some notice here of another bill of this session, next to the one last mentioned, as they appear on our records, entitled, "an act for measures and weights." This bill, after regulating "measures and weights" in relation to other articles, thus proceeds with respect to Indian corn,—“And all contracts made for payment in corn shall be understood of corn shelled; and a barrel of new corn tendered in payment at or afore the fifteenth day of October in any year shall be twice shaken in the barrel, and afterwards heaped as long as it will lie on; and at or before the feast of the nativity shall be twice shaken and filled to the edge of the barrel, or else not shaken and heaped as before; and after the said feast it shall not be shaken at all, but delivered by strike.”

Notwithstanding the expressions of this clause are somewhat obscure, yet it is plainly to be understood, that when speaking of "a barrel of new corn," it means corn *in the ears*, and not shelled, as in the preceding sentence.

As the regulation of weights and measures forms one of the most important articles in the police of every government, it was highly proper that the legislature of the province should make it a subject of its earliest attention. With propriety it adopted the usage and practice of the mother country, in relation to this subject, in all other respects than in that of corn. Indian corn not

* Taken from *Lib. C. & WH.* p. 57.—It may be proper to observe also, that similar regulations respecting the growth of corn had been adopted in Virginia. It is an article of the oldest law upon record in that colony, passed in the year 1624, "That three capable men of every parish should be sworn to see, that every man planted and tended corn sufficient for his family; and that those who neglected so to do, should be presented by the said three men, to the censure of the governor and council;" and in the year 1629 it was further regulated, "That every labourer was to tend two acres of corn or forfeit all his tobacco." See Burk's *Hist. of Virg.* vol. 1, p. 283, and vol. 2, p. 31.

being an agricultural produce of England or the British isles, CHAP. II.
 no regulation thereof had ever there taken place. Some provi- 1639.
 sion relative thereto in the province was, therefore, absolutely
 necessary. It is probable, that the usage of *shaking* and *heap-*
ing, as described in this bill, was borrowed from Virginia, where
 corn must have been now cultivated in considerable quantities.
 It seems extraordinary, however, that the *mode* of measuring corn
 by the barrel has never been precisely ascertained by law in either
 the province or state of Maryland, and to this day, when corn
 has been contracted for by the barrel, disputes frequently arise
 on the mode of measurement.*

Sect. (13.) "All tobaccos shipped out of the province, (ex- Customs or
 cept to *England, Ireland, or Virginia,*) shall pay a custom of duties on
 five in the hundred." the expor-
tation of
tobacco.

This clause, we may suppose, like the other clauses of this
 act, had reference to one other of the before mentioned bills of
 this session, entitled, "an act for a custom on certain tobaccos;"
 by which five per cent. on all tobaccos exported, (except to
 England, Ireland, and Virginia,) was given to the *lord proprie-*
tary.—In further explanation of this subject, it may be proper
 to lay before the reader two clauses in the *instructions* to Sir
 William Berkeley, on his being appointed to succeed Sir John
 Hervey, as governor of Virginia, in the early part of this year,
 (1639.) It will be recollected, as before observed, that two
 colonial principles had been adopted by king Charles with re-
 spect to his dominions in America; which were, that no tobac-
 cos should be imported into England from any foreign country,
 but from the American colonies only, and on the contrary, that
 these American colonies should export no tobaccos to any fo-
 reign country, but to England only.† But this latter prohibition
 with respect to the exportation of tobacco from the colonies to
 any foreign country seems to have failed in its intended effect.
 The order of the king in council, before mentioned, is said to have
 been either disregarded or eluded. However that was, the fore-
 going section of our act of assembly demonstrates, that the Ma-
 ryland colonists were at liberty at this time to export their tobac-
 co to other countries than England, Ireland and Virginia. The
 two clauses in the *instructions* to Sir William Berkeley afford

* As the regulation of weights and measures is a highly important subject un-
 der every government, the reader will find a full copy of this first essay towards
 it in our Maryland colony, in note (XXXIV.) at the end of this volume.

† See what is observed in the preceding chapter on this subject, p. 78.

CHAP. II. further proof, that this last mentioned order of prohibition had
 1639. lost its force also, as to Virginia. They are as follows:—"14thly.

Whereas many ships laden with tobacco and other merchandizes have thence carried the same directly to foreign countries, whereby his majesty loseth the duties thereupon due, there being nothing answered in Virginia; you shall be very careful that no vessel depart thence loaded with those commodities, before bond, with sufficient sureties, be taken to his majesty's use, to bring the same into his majesty's dominions, and to carry a lading from thence; that the staple of those commodities may be made here; whereby his majesty, after so great an expense upon that plantation, and so many of his subjects transported thither, may not be defrauded of what is justly due for customs on the goods. The bonds to be transmitted, that delinquents may be proceeded against.—15thly. To forbid all trade with any foreign vessel, except upon necessity: the governor shall take good bonds of the owners of tobacco, that it be brought to the port of London, there to pay such duties as are due."*—Although the prohibition of all foreign trade with Virginia was here again renewed, yet these *instructions* shew, that the former order in council, in this respect "was more honoured in the breach than the observance." The "duties" payable in London were said to be those payable under the statute of 1 Jac. 1, ch. 33, entitled, "an act of a subsidy of tonnage and poundage," by which the subsidy of poundage was granted to the king on all "goods and merchandize brought into or carried out of the realm, at the rate of twelve pence on every twenty shillings value," equal to "five in the hundred," as expressed in our act of assembly. It is further said also, that the exception in the clause of exemption from taxes in the *second* charter of Virginia, (of 1609,) relates to this statute; in which clause the king grants to the treasurer and company, "that they shall be free of all subsidies and customs in Virginia, for the space of one and twenty years, and from all taxes and impositions for ever upon any goods or merchandizes at any time hereafter, either upon importation thither, or exportation from thence into our realm of England, or into any other of our realms or dominions, by the said treasurer and company and their successors: except only the five pounds *per cent.* due for custom upon all such goods and merchandizes as shall be brought or imported into our realm of England, or any other

* See large extracts from these *instructions*, in *Chalmers's Annals*, p. 132.

of these our dominions according to *the ancient trade of merchants.*"* CHAP. II.
1639.

Although this charter, as well as the others granted to the old Virginia Company, had been long since dissolved, and the colony placed under a royal government, when the king would consequently have been entitled to any customs or duties, which should be imposed *within the colony* of Virginia on its exports or imports; yet the king, in these *instructions*, demanded nothing more than what was contained within the *exception* in the charter, to wit, the customs or duties payable *in England* on tobacco imported therein from Virginia. The like reservation to the crown of these customs or duties on goods and merchandize, to be imported from Maryland into England, seems to have been made in the eleventh and fifteenth sections of lord Baltimore's charter; which customs or duties so saved or reserved to the king in that charter, we may suppose to be those imposed by the before mentioned statute of 1 Jac. 1, ch. 33.—But in a subsequent section (the seventeenth) of the charter of Maryland, a grant is made to lord Baltimore of "the taxes and subsidies payable or arising within the ports, harbours, &c., *within the province*, for wares bought and sold, and things there to be laden or unladen." Hence, therefore, we are enabled to discern the power and authority of the assembly to bestow the "customs of five in the hundred," on the lord proprietary instead of the king. A reimbursement of the extraordinary expenses, to which the lord proprietary had been put in the settlement of the colony, operated without doubt with the assembly, as a cause of their legislative remuneration.

We proceed next to what may be called the great constitutional clause of this act:—

Sec. (14.) "The lieutenant general and secretary (or his deputy) and gentlemen summoned by special writ, and one or two burgesses out of every hundred, (at the choice of the free-men,) at any time hereafter assembled, shall be judged a general assembly." The constitution of the general assembly more especially provided for.

The bill of this session, which is peculiarly explanatory of

* See this charter in Hazard's Collections, vol. 1, p. 68.—Chalmers, (in his Annals, p. 47–8,) observes upon this clause of *exception* in this charter, that "this duty was assuredly payable by virtue of the act of tonnage and poundage, which passed in the first year of king James; though that prince, turning his face from the parliamentary grant, considered the custom as due, according to *the ancient trade of merchants.*"

CHAP. II. this section of the act, must also be attended to. It is entitled,
1639. "an act what persons shall be called to every general assembly."—By this bill, (which was intended to be perpetual,) "every member of the council, and any other gentlemen of able judgment and quality summoned by his lordship's writ, and the lord of every manor within the province, (after manors be erected,) together with one, two, or more able and sufficient men, (as the freemen should think good,) elected for each hundred, in pursuance of writs issued for calling any general assembly, and *no other*, should have a voice, seat, and place in such general assembly. And every act therein made by persons so called, and elected, or the majority of them, and assented to by the lord proprietary or his lieutenant general, thereunto authorised by special warrant from his lordship, to be of as good force, as if his lordship and all the freemen in the province had been personally present at such general assemblies, and had consented to and approved of the making and enacting such laws. Provided, that all acts so approved by the freemen and by the lieutenant general in his lordship's name, should be of force until the lord proprietary should signify his disassent to the same under the great seal, and no further or longer."—The next bill of this session, entitled, "an act concerning the calling of general assemblies," requires also to be here mentioned. By this last bill, (intended also to be perpetual,) "assemblies were to be called once in every three years at the least, and the freemen assembled therein, to have the like power, privilege, authority, and jurisdiction, in causes and matters arising within this province, as the house of commons in *England* have had, used, or enjoyed, or of right ought to have, use, or enjoy, in any matters which have at any time happened or risen within the realm of *England*."

We see here a closer imitation of the English constitution, and especially of those parts of it which have been estimated as affording the greatest security to political liberty, forming what is called the representative system, than we could possibly have expected from either the temper of the times in which it occurred, or the peculiar political sentiments of those by whom it was enacted. It was now perceived, that even in the present population of the colony, it would be highly inconvenient, either to depend upon the assemblage of all the freemen in the province for the purposes of legislation, or to interrupt the occupation of a planter peaceably settled on some remote plantation, by calling

him to the performance of a duty, for which he was not in any manner qualified. That any freeman of the province should have a right to give his vote in the choice of any person in whom he might think it proper to repose his confidence to represent him as his delegate in the assembly, was deemed by the members of this assembly as a sufficient reservation of the natural right of every citizen to assent to laws, before he is bound by them. CHAP. II.
1639.

An exceptionable part however, of the foregoing regulations appears in that which admits of "the summoning by his lordship's writ any other gentlemen of able judgment and quality," besides the delegates from the hundreds. As long as they continued to sit together in one body, and to enact laws by a plurality of voices, it would always have been in the power of the governor for the time being to create a majority in the house, by summoning particular "gentlemen," whom he well knew, would answer his purposes. This objection, however, would be in some measure done away, as soon as the legislature, (which afterwards took place,) was divided into two branches. As soon as the delegates from the hundreds obtained the secluded right of assenting to the laws according to the sense of their own body, the numbers, which might constitute the other branch or upper house, ceased to be an object of much importance. The principle of "checks and balances" remedied the evil. That the "lord of every manor" should also be entitled to a seat in the legislature, demonstrates an intention of the first rulers of the province, often before signified in other instances, to create an hereditary aristocracy in the province, which should, as it seems, from this bill, have been vested with an hereditary right to a seat in the legislature similar to the nobility of England.

The *proviso*, in the first of these two last mentioned bills, which was intended to secure to the lord proprietary his right of "disassent" to the laws, although the assent of his lieutenant general should have been previously given to them, seems to us at this day a principle, which must have been inconvenient to, if not inconsistent with, the good government of the province. Had the lord proprietary resided within the province, perhaps little inconvenience would have resulted from it. But that laws should have been suspended, as it were, over the heads of the inhabitants of the province, until his lordship's will, three thousand miles distant, could be obtained, does not comport with

CHAP. II. the pure administration of a free government. His lordship
 1639. should, either have resided within the province or considered himself as bound by the assent of his lieutenant. It is probable, however, that this right of "disassent" was one of the "rights and prerogatives" secured to the lord proprietary by the third section of the act of this session, as before mentioned.

The last of the bills just mentioned, entitled, "an act concerning the calling of general assemblies," merits particular notice; inasmuch as it seems to have been a legislative anticipation of some remarkable proceedings of the English parliament, which was called and held in the succeeding year, (1640;) at which session was passed a statute, (16 *Car.* 1, ch. 1,) entitled, "an act for triennial parliaments;" by which, (as observed by *Hume*,) "some of the noblest and most valuable prerogatives of the crown were retrenched, but at the same time *nothing could be more necessary* than such a statute, *for completing a regular plan of law and liberty*.* By an old statute, passed during the reign of Edward the III., it had been enacted, that parliaments should be held once in every year, or more frequently, if necessary: But as no provision had been made in case of failure, and no precise method pointed out for execution, this statute had been considered merely as a general declaration, and was dispensed with at pleasure. The king having dissolved the third parliament of his reign in the year 1629, with obvious marks of great displeasure, and having, as it is said, formed a resolution of governing without one, had neglected for almost eleven years to summon another. At last in March, 1640, (N. S.) he called his fourth parliament, but finding that instead of voting supplies, they employed themselves in the redress of grievances, he suddenly dissolved them after they had sat only a few weeks. Heartily regretting this measure, as it is said,† he summoned another parliament to meet in the November following; at which session was passed the above mentioned triennial act. It is evident, however, from this last mentioned bill of our provincial assembly, that the political sentiments of the English nation, which dictated the above mentioned statute, had previously travelled across the Atlantic. Yet it must be confessed, to be somewhat surprising, when we consider that the great majority of our Maryland colonists were of that sect of religion (the Catholic)

* *Hume's Hist.* ch. LIV.

† *Lord Clarendon's Hist.* B. II. p. 47.

which had been hitherto accustomed on all occasions to arrange CHAP. II.
 itself on the side of the prerogatives of the crown, and for 1639.
 which sect indeed, or a supposed attachment to them, it may be
 said, that the unfortunate Charles forfeited his life, that they
 should now, when transplanted into a distant country under their
 own guidance and direction, manifest as ardent a zeal for popu-
 lar rights as their greatest enemies in England were now ex-
 hibiting. To account for this, we cannot but suppose, that
 many individuals of the puritanic sects either had mingled in
 the first Maryland emigration, or, driven from Virginia, had join-
 ed themselves with this Catholic colony, as being all equally
dissenters from the established church of England, and therefore
 equally interested in plucking out the prerogative feathers of the
 royal bird. That some puritans were now resident in the pro-
 vince of Maryland seems evident from the incident before men-
 tioned, relative to Cornwaleys' servants.* Be that as it may,
 we must acknowledge, that this bill of the present assembly,
 whereby "assemblies were to be called once in three years at
 the least," like the "act for triennial parliaments" deserves the
 highest eulogium. The subsequent part of the same bill, where-
 by the provincial assembly should be invested with "the like
 power, privilege, authority, and jurisdiction as the house of
 commons in England," further demonstrates, that the commons
 of Maryland and England were actuated with equal zeal in the
 maintenance of their liberties.

Sect. (15.) "All commissions from or under the lord proprie-
 tary, which shall be in force at his death, shall remain in the
 same force until a new commission for the government publish-
 ed under the great seal."

In this clause also, our colonists appear to have anticipated
 the English legislature in a great improvement of the common
 law. By the common law of England the death of the king,
 called the demise of the crown, abrogated all *commissions* previ-
 ously issued, and indeed occasioned a discontinuance of all
 process; but this latter inconvenience had been remedied by the
 statute of 1 *Edw.* 6, ch. 7. It was extraordinary, that when so
 many inconveniences must have resulted from this principle of
 the common law, and when the death of a fellow mortal was a
 casualty so liable to happen, that no remedy should have been
 applied to it by parliament; until the English revolution, which

The dura-
 tion of
 commis-
 sions,
 in case of
 the death
 of the lord
 propieta-
 ry provid-
 ed for.

* See before p. 83, 84.

CHAP. II. brought with it a happy cure for many evils, reminded them of
 1639. applying one to this. By the statute of 7 & 8 *Will.* 3, ch. 27, “no commission, either civil or military, shall become void by the death and demise of the king;” which was rendered still more precise and comprehensive by the subsequent statutes of 1 *Ann.*, ch. 8, and 1 *Geo.* 3, ch. 23. As all commissions in Maryland issued in the name of the lord proprietary, who was supposed to possess, in virtue of his palatinate powers, royal prerogatives, his death would have been liable to a similar construction as that of the king. Our colonial ancestors were, without doubt, apprised of these inconveniences;—for, many altercations and discussions on this subject appear to have taken place in the courts of Westminster Hall soon after the death of king James.* Not perhaps so much alarmed at even the contemplation of the death of the lord proprietary as at that of the king, they could venture with less timidity to touch upon the subject. With a foresight and wisdom, which does them credit, they provided against the coming evil.

A water-mill; the building of one directed.

Sect. (16.) “Any bargain, which the lieutenant general and council shall make with any undertaker, for the setting up of a water mill for the use of this colony, shall be levied upon all inhabitants of the colony, in such manner as the lieutenant general and council shall appoint, so it exceed not 10,000 lbs. tobacco in a year, for two years only.”

A learned annalist of the British colonies has thought it worth observing upon this clause, that “we may easily estimate the numbers, and wealth, and power, of a people, who think it necessary, by *general contribution*, to erect a water mill for the use of the colony.”† The *number* of colonists, who came to Maryland, in the first emigration to it, was, as we have before stated,‡ said to have been about two hundred. In the course of five years they might now have increased to about three hundred. But among these it was probable, that there were not above two or three wealthy persons among them; most of them being adventurers, who, though honest and creditable in England, sought to better their fortunes, as well as peaceably enjoy their religion, in this remote country. The rich English Catholics, though persecuted at home, would probably “rather bear the ills they had, than fly to others, which they knew not of.”

* See *Cro. Car.* 1, p. 98.

† Chalmers's *Annals*, ch. IX. p. 214.

‡ See before, p. 26.

Hence, therefore, there might not have been any individual in Maryland, who would choose to risk his little capital in the costly structure of a water-mill, the profits of which might have been uncertain, especially as hand-mills, and other modes of preparing maize for food, were in early use with the colonists. This instance, however, of the slow progress of improvement in Maryland, was not singular in American colonization. The first water-mill built in Massachusetts, is said to have been in the year 1633,* when the colony had been planted about five years, the same length of time as Maryland.

CHAP. II.

1639.

The necessity at this time, of building whatever public edifices the colony had occasion for, "by contribution," is more particularly illustrated by a bill of this session, entitled, "an act for the building of a towne-house;" by which it was provided, that "every house-keeper should be *contributory* to the said building either in stuff, workmanship, labour, or tobacco, in such manner and after such rates proportionally to each man's *personal* estate."†

We have thus traced in detail the substance of the act of assembly of this session, entitled, "an act ordaining certain laws for the government of this province;" the principal inducement to which was, that it is one of the first acts of assembly of the province, of which any record now remains, and forms one of the principal sources from whence we can at this day derive any ideas of the early civil and political institutions of the colony. The several bills also, "engrossed but not passed," claimed also some particular notice; being the "certain laws for the government of the province," intended to be "ordained" by the act, and clearly illustrative and explanatory of the greater part thereof. There are a few of them, however, relative to some particular subjects, which do not appear to have been noticed in the act, but, for the reason just assigned, still demand some attention in this place.

The law of *descents*, from its well known effects in the structure of all civil society, generally claims the notice of every minute inquirer into the municipal institutions of any government. The bill of this session, entitled, "an act for the de-

* Holmes's Annals, *sub-anno* 1633. In the same year a saw-mill is said to have been erected near London; but as it was deemed to be a machine, which would deprive the labouring poor of employment, it was demolished, perhaps by the populace.

† See note (XXXV.) at the end of this volume.

CHAP. II. scending of land," requires, therefore, some attention; more especially as it contains, not only an express recognition of the common law of England, relative to *descents*, but also some important regulations in respect to the *limitation* of claims to lands,—to the appointment of guardians to heirs,—and to *escheats*; for, although these bills were for the most part expressly limited in the body of them to continue only "until the end of the next session of assembly," yet it is certain, that though for want of other regulations, they were for many years acted under as laws, and some of them subsequently re-enacted under the same or similar titles. The act of 1642, ch. 17, entitled, "an act touching succession to land," seems to have been only a revival of the clause in that of this session relative to the descent of lands to the next heir.*

Another of these bills, entitled, "an act for assuring of titles to land," seems closely connected with that last mentioned. It required, what would be of great utility at this day in the investigation of *titles* to lands, did it not appear to interfere rather too much with the *private* rights of individuals;—that the party producing a deed to be recorded, or if he "claimed by law only," should state "the special matter or title by which he claimed," and such statement should be recorded, and *proclamation* thereof made every year for three years, and if no person allege any thing to the contrary, such entry upon record should be a bar for ever to all other persons.†

Supplementary to these two last mentioned bills, relative to real property, may be mentioned another, entitled, "an act for enrolling of grants;" which consists merely of the following short regulation.—"No grant, deed, lease, conveyance, or estate hereafter to be made by the lord proprietary, of any lands, or office, shall be of any force or validity until such grant, &c. be enrolled by the secretary, or other person to be appointed."‡ This appears to be the only *legislative* authority, now to be found on record, for recording the patents of lands granted by the lord Baltimore. It will be recollected, however, that by the commission of April 15th, 1637, before stated, Mr. John Lewger was appointed "as well to be secretary and keeper of the acts and proceedings of the lieutenant and council for the time

* See note (XXXVI.) at the end of this volume.

† See note (XXXVII.) at the end of this volume.

‡ Liber C. & WH. p. 33.

being, as *for the doing and recording of all grants* by the lord proprietary and his heirs to be made of any lands or offices within the said province.”* This might perhaps have been deemed sufficient authority for an usage certainly always or generally pursued under the provincial government. It is probable, that the affairs of the land office were considered so peculiarly appertaining to the private direction and control of the lord proprietary, as to make any subsequent *legislative* interference therein, either unnecessary or intrusive.

CHAP. II.
1689.

To promote the increase of the population of the province, as might naturally be expected, some anxiety seems to have been manifested at this time by those, who administered the provincial government. Accordingly, two bills of this session, apparently calculated for that purpose, were prepared, and which remain yet unnoticed. The first of them, entitled “an act for the peopling of the province,” was nearly as follows;—“If any persons, (to whom manors, lands, or tenements should be granted by the lord proprietary,) should not for three whole years together, have so many able persons, being christians, settled, &c. in or upon the same lands as are mentioned in the original grant thereof to be the consideration of granting the same, his lordship was empowered to grant or lease any part or parts of such unoccupied lands to any other person, for a life or seven years, and to receive the fine and first year’s rent.”† As somewhat explanatory of this bill, if the reader recurs to the first conditions of plantation, now extant upon record, dated August 8th, 1636,‡ he will find, that the *transportation of people* to inhabit in Maryland formed the principal condition upon which “rights to land” were to be acquired. But these people so to be transported, at the expense of others, who thereby proposed to acquire “rights to land,” were bound to make some compensation to those, who had either advanced the expenses of their passage across the Atlantic, or paid such expenses subsequently to their arrival. For that purpose written contracts were commonly entered into by the persons so transported, binding themselves to a service of a specified number of years. To prevent frauds in such contracts and possibly an unlimited servitude, appears to have been the intention of the bill of this session, entitled, “an act limiting the times of servants.” As this usage or mode of acquiring

* See note (VI.) at the end of this volume, before referred to.

† Liber C & WH. p. 34.

‡ See before, p. 38.

CHAP. II. white servants subsisted in the province for considerably more
1639. than a hundred years, from the first settlement thereof to the declaration of independence, the curiosity of the reader may perhaps be gratified by inserting a copy of this last mentioned bill, the first upon record relative to the subject.*

* See note (XXXVIII.) at the end of this volume.

CHAPTER III.

Hostilities with the Indians—Preparations for training the militia—A further division of the county of St. Mary's—Lord Baltimore's right to the royal game of the province—Clayborne's demand of his property within the province—An assembly called—Their proceedings—Remarks on the acts of the session—Judicial powers exercised by the assembly—Animosity of the Indians—Session of assembly in 1641—Some few acts of assembly therein—The session of 1642—Their proceedings—Religious discontents—The acts passed at the last session—New conditions of plantation—Maryland settlements on the Schuylkill—Attempt in England to revive the old charters of Virginia—The effect of that attempt upon Maryland—War with the Indians—Another session of assembly in 1642—Proceedings therein—Remarks on some of the acts of this last session—Preparations against the Indians.

The proceedings of the last session of assembly, (of 1638–9,) together with the military preparations, which appear to have immediately succeeded it, exhibit strong proofs, that the happy harmony, which had hitherto subsisted between the natives and the colonists, was now at an end. These miserable aborigines of the country, particularly in Virginia and Maryland, seem to have been now generally sensible of their approaching ruin in the increase and permanence of the intruding colonists. Symptoms of a general discontent among all the tribes, inhabiting the shores of the Chesapeake, were now manifestly exhibited. It was about this period, that Opechancanough, the successor of Powhatan, and a chief, on whose heroic virtues the Virginian historians bestow high encomiums, must have begun to meditate that horrible massacre of the colonists of that province, which took place not long afterwards.* In Maryland also, the Susquehannocks, who have been represented as being the boldest and most warlike tribe of Indians found in the territories of Maryland, seem to have been also now engaged in hostilities against our colonists. It would appear from circumstances, that this warfare with them was brought on our colonists by their endeavours to stay the incursions of the Susquehannocks against the peaceable and friendly tribes of Piscattoway and Patuxent, and probably

CHAPT.
III.
1639.
Hostilities
with the
Indians.

* Historians differ as to the time of the massacre in Virginia. *Beverly*, (in his *Hist. of Virginia*, p. 49,) places it in the latter end of 1639 or beginning of 1640; but *Burk*, (*Hist. of Virg.* vol. 2, p. 54,) contends, that it must have occurred in the winter of 1641–2. Five hundred colonists in Virginia were killed at this massacre.

CHAPT. the Yoamacoes, with whom, it would seem, the Susquehanocks
 III. had never ceased to wage unintermitted hostilities ever since the
 1639. first settlement of the Maryland colony at St. Mary's, as has
 been before mentioned. Some eastern shore Indians also are
 said to have acted in such a manner as to make it necessary for
 the colonists at St. Mary's to fit out an expedition against them;
 but we are not informed, either what tribe they were or in what
 part of the eastern shore they inhabited. Our records afford but
 very scanty materials, indeed, for deriving any knowledge of
 these hostile proceedings. The principal document, relative to
 these transactions of the present date, appears to be an order by
 the governor and council, directing preparations for these milita-
 ry measures; and is, as follows:

“By the lieutenant general and council, 28th May, 1639.

“Whereas it is found necessary forthwith to make an expedi-
 tion upon the Indians of the eastern shore upon the public charge
 of the province, it is to that end thought fit that a shallop be
 sent to Virginia for to provide 20 corsletts,* a barrel of powder,
 four roundlets of shot, a barrel of oat-meal, 3 firkins of butter,
 and 4 cases of hot waters; and that 5 able persons be pressed to
 go with the said shallop; and necessary provisions of victuals be
 made for them; and that a pinnace be pressed to go for Kent† suffi-
 ciently victualled and manned, and there provide 4 hhds. of
 meal; and likewise that a pinnace be sent to the Susqueha-
 nocks,‡ sufficiently victualled and manned, and 30 or more good
 shott§ with necessary officers, be pressed out of the province,
 and that each of the shott be allowed after the rate of 100 *lb.* of
 tobacco per month, or another man in his room to tend his plan-
 tation, and 2 sergeants double the said rate; and that victuals
 and other necessary accommodations for the said soldiers and for
 all others, which shall go as volunteers, be made and provided,

* A corslett was a light armour for the fore part of the body; a species of cuirass; which was made of a thin iron plate well hammered; or a number of thin iron plates fastened together, and lapping over each other like the scales of fish.

† The isle of Kent.

‡ Although the expression here is—“to the Susquehanocks,”—yet from the remaining part of this order, as well as from subsequent documents in our records, it would seem, that this military force now levied was to go *against* the Susquehanocks, and not to their aid against others.

§ In modern phraseology in England, a good marksman with a gun or pistol is commonly called—a good *shott*. Although the word is not to be found in the best English dictionaries, in this sense, yet we perceive from the use of it as above, that it is an old English phrase.

and 2 pinnaces and 1 skiff, (if there be need,) shall be pressed and fitted for the transporting and landing of the said companies, and that good labouring hands be pressed to supply the places of such planters as shall be pressed upon the service, and be allowed after the same rate of 100 *lb.* per month.”

CHAPT.
III.
1639.

Signed by

“Leo. Calvert,
Giles Brent,
John Lewger.”*

Besides the equipment of this military force to be sent against the Susquehanocks, it seems to have been thought proper also to place the colonists, particularly those about St. Mary's, in a better state of defence than they had been. In the late act of the last session, (1638, ch. 2, sect. 8,) it had been provided, that—“The captain of the military band, (at the direction of the lieutenant general,) shall use all power necessary, or conducing in his discretion, to the safety or defence of the province. And the commander of Kent to do the like within that island.” The bill also, entitled, “An act for military discipline,” further provided for the details of the preceding clause of the act. In pursuance of these laws, as it appears, a commission was issued to Giles Brent, esqr., (then one of the council,) bearing date the 29th of May, (1639,) the next day after the above mentioned order, “appointing him to be captain of the military band next under our lieutenant general, requiring him to train and instruct *all the inhabitants of our said colony* able to bear arms, (those of our council excepted,) in the art and discipline of war on holy-days and at any other time when there should be need; and by himself or his sergeant or other officer, once a month if he should find it needful, to view at every dwelling house within the said colony the provision of necessary arms and ammunition, and where he found any defect to amerce the party failing at his discretion, so that it exceed not 30 *lb.* tobacco for one default, and further to punish any delinquent in any kind offending against the discipline military.”* We may suppose, that in virtue of these laws and this commission, the inhabitants of the colony were immediately formed into a regular militia, and trained and disciplined accordingly.

Nothing further appears upon our records, which can throw any light upon the military or other transactions of the colony,

* “Council Proceedings from 1636 to 1657,” p. 41.

† “Council Proceeding from 1636 to 1657,” p. 38.

CHAPT. appertaining to the present year; except, that some few ideas of
 III. the nature of the trade carried on at this time by the colonists of

1639. Maryland with those of the Swedes on the Delaware, the Dutch on the Hudson, and the colonists of New England, as also of the internal traffic with the Indians, may be gleaned from one or two commissions of this year, still extant upon our records, in relation to those subjects. From these, it seems to have been lawful at this time for any inhabitant of Maryland, under the authority of a commission or license for that purpose, "to trade with any Indians within the province for corn, and the corn, so traded for, to export out of the province, and to trade the same with any people inhabiting to the northward of the capes, commonly called cape Henry and cape Charles, strictly prohibiting them from exporting any arms or ammunition to any Indian or foreigner whatsoever.*"

1640. The warfare with the Indians, which had commenced in the last year, seems to have still subsisted at the beginning of the next. From a commission issued to Nicholas Hervey, bearing date the 3d of January, 1639, (1640, N. S.) it appears, that certain Indians of the nation or tribe called the *Maquantequats*, had "committed sundry insolencies and rapines upon the English inhabiting within this province;" for which they had refused to make any satisfaction, as demanded of them. The government was therefore "compelled to enforce them thereto by the justice of a war." This commission therefore authorised Hervey, "with any company of English as should be willing to go along with him, so they exceed the number of twelve men sufficiently provided with arms, to invade the said *Maquantequats* *only*, and against them and their lands and goods to execute and inflict what may be inflicted by the law of war; and the pillage and booty therein gotten to part and divide among the company that shall perform the service."† From the express direction

* See the license or commission to Andrew Chappel, recorded in "Council Proceedings from 1636 to 1657," p. 42;—the conclusion of which commission is thus:—"We will that this our commission continue in force until the next return of the said Andrew or his vessel into our said province of Maryland.—Witness, Leonard Calvert, esqr., *admiral* of our said province. Given at St. Mary's this 11th June, 1639."

† See this commission in "Council Proceedings from 1636 to 1657," p. 42.—Although, by the ancient as well as modern usage of war, goods taken from an enemy, in what is called a solemn war, by soldiers or the army of a state, become the property of the sovereign power to which the soldiers belong, yet it was often the practice, being a subject of municipal regulation, to direct, that the "pil-

above, to make war *only* upon the Maquantequats, it is to be inferred, that the colonists were at peace with all other Indians; at least with such as lived in the neighbourhood of the Maquantequats. Correspondent with this supposition, a proclamation was issued not long afterwards, bearing date, January 24th, 1639, (1640, N. S.) declaring, "that we are in peace and amity with the Patuxent Indians our neighbours, and have taken them into our protection, and therefore do by these presents prohibit all English whatsoever within our province of Maryland for the time being, that they do not offer any injury or outrage whatsoever to any of the said Indians, upon pain of such punishment as the offence shall deserve."* It may be here remembered, that these Indians of Patuxent seem to have been hitherto uniformly friendly to the colony in conformity to the remarkable sentiment expressed by their king on the first landing of the colonists, as before mentioned.†

CHAPT.
III.
1640.

Some new regulations in the government appear to have now taken place, which, although not very important it may nevertheless be incumbent on us to mention. It will be recollected, that in the latter end of the year 1638, William Brainthwayte, esqr., was appointed chief captain and commander of the isle of Kent, in military as well as civil matters; and he appears to have acted as such until the present time. But as captain Brent was now lately fixed upon as a proper person to train and discipline the militia of the province, as before mentioned, we are to infer, that he was a man possessed of some greater experience in military affairs, than most others in the province; unless he had been so advanced, through special favour, by reason of some alliance or affinity with the lord Baltimore's family.‡ However

Prepara-
tions for
training
the militia.

lage and booty," so taken in war, should be divided among the soldiers. See *Grotius de Jur. Bell. & Pac. b. 3, ch. 6, sect. 17.*—It differs from a right given to every soldier individually to plunder as he pleases; for besides being productive of less cruelty to the enemy, it produces a greater equality and justice in the distribution of the plunder, the worst soldiers being commonly most intent on pillage. *Ibid. sect. 18.* It is worth observing, that at this period of time, the warfare of the most civilized nations in Europe was constantly attended with a license to the soldiery to plunder. During the war, called the thirty years war of Europe, from 1618 to 1648, as a modern historian observes,—“the exactions of the officers, and the plundering of the soldiers was at that time, the chief part of the art of war.”—*Mod. Univ. Hist. vol. 42, p. 240.*

* “Council Proceedings from 1636 to 1657,” p. 43.

† See before p. 31.

‡ It appears from the land records of the province, (*Liber, No. 1,*) that Mr. Giles Brent and Mr. Fulke Brent his brother first arrived in the province on the

CHAPT. that was, it seems to have been now thought proper to transfer
 III. him to the command of the isle of Kent; the dangers arising
 1640. from the hostilities of the savages in that quarter most probably requiring a person of more military knowledge than Mr. Brainthwayte. A commission was therefore issued to "captain Giles Brent, esqr., one of the council of our said province," bearing date, February 3d, 1639, (1640, N. S.) constituting and appointing him "to be commander of our isle of Kent within our said province, to rule and govern the inhabitants and all other persons within our said island, according to the powers herein committed to him."*

Although it is probable, that captain Brent went to the isle of Kent in pursuance of his commission, yet, if he did, he must have sojourned there but a few months; for, in August of this year the records recognize Mr. Brainthwayte again as commander of the isle of Kent, as we shall presently see.

A further division of the county of St. Mary's. In the mean time some regulations took place towards the further population and division of the province. All that part of St. Mary's county comprehended within the following metes and bounds, viz. "the two islands called St. Clement's isle and Heron's isle, and all the land over against the said islands on the north bank of Patowmack river between the creek commonly called the Herring creek on the east and St. Catherine's creek

22d of November, 1638. With them came two of their sisters, Mrs. Margaret Brent and Mrs. Mary Brent, the former of which ladies we shall have to mention again on a singular occasion. This family brought with them a considerable number of servants of both sexes.—It further appears, that in contemplation of capt. Brent's appointment as commander of the isle of Kent, he received the promise of a grant of a considerable quantity of land on that island; for, about a month before the date of his commission as commander thereof, an order was issued to the surveyor, as follows:—"7th January, 1639.—I would have you to lay out for Giles Brent, gent., treasurer, of the council of this province, one thousand acres of land, lying nearest together about Kent fort, and one thousand more where he shall desire it, and to certify Mr. Secretary what you do therein." The first mentioned thousand acres was accordingly laid out as directed, and by a grant thereof, bearing date the 7th of September, 1640, it was erected into a manor under the name of "The Manor of Kent Fort." The scite of this manor included all that neck of land now commonly known and called by the name of Kent point,—the southernmost extremity of the isle of Kent. The fort aluded to must have stood near to the first creek on the left hand when sailing up what is now called the eastern bay, after passing Kent point; and was, probably, the place, where Clayborne made his first settlements prior to the arrival of the first Maryland colonists under Leonard Calvert. This manor remained in the possession of persons of the name of Brent, (probably of the family of Giles Brent the grantee,) until some time during the American revolution.

* See note (XXXIX.) at the end of this volume.

on the west, and extending into the woods five miles any where from the said bank," was thought fit to be erected "into a hundred by the name of St. Clement's hundred." In consequence of which, commissions issued, (bearing date the 16th of March, 1639, (1640, N. S.) appointing Thomas Gerard, gent. conservator of the peace within the said hundred;* and John Robinson, of St. Clement's isle, "high constable" thereof. The powers vested in these officers by these commissions exhibit not only the state of the common law as it was then supposed to exist in the province in relation to the duties of such officers, but also a peculiar royal prerogative appertaining to the lord proprietary of the province. Mr. Gerard was appointed "conservator of the peace within the said hundred, as well upon the land as upon the water adjoining to it, with all powers and authorities belonging to any *two justices* of peace in England by the law or usage of England;" Robinson "to be high constable of the said hundred with all powers to a high constable belonging by the law or usage of England." The special duties prescribed in these commissions were:—To the justice of the peace,—“to use all power and means necessary for the preserving of any of our rights within the said hundred, either upon the land or water, and to punish according to his discretion with imprisonment or fine not exceeding † tobacco, with any corporal correction not extending to life or member, any offenders against our said rights, and specially such as shall destroy or disturb our game of herons upon Heron island by unlawfully taking either the fowls or eggs, or by shooting upon or near the said island, and to take to your own use the guns, nets, or any other instruments used by any offender to the disturbance or destruction of any of our game as aforesaid, and to apprehend and send to St. Mary's all unlawful traders with the Indians, and specially such as shall give or sell to any Indian any arms or ammunition, and to see that the inhabitants of the said hundred be provided of necessary and sufficient arms for their defence upon all occasions, and to do all other things necessary for the execution of the powers hereby committed unto you.”—To the constable,—“to inquire of and

* A great part of this hundred, with the exception of Heron island, had been, a few months before, erected into a manor, called "St. Clement's Manor," and granted (November 3d, 1639,) to Mr. Thomas Gerard, (most probably the same gentleman above mentioned,) with a clause in the grant, as usual, of holding a court-baron and court-leet therein. See Land Records, *Lib.* No. 1, p. 43.

† This blank so in the record.

CHAPT. present to our lieutenant general or other justice aforesaid all
 III. persons whatsoever, that shall unlawfully trespass upon any our
 1640. game of deer, turkies, herons, or other wild fowl or shall destroy
 their nests or eggs either upon our land or waters without leave
 of us or under, &c. and to take away their nets, hounds, or other
 means of taking them.”*

Lord Bal-
 timore's
 right to the
 royal game
 of the pro-
 vince.

Although by the law of nature animals *feræ naturæ* were lia-
 ble to be made the property of the first occupant, who should
 take them ; yet by immemorial usage most of the monarchies of
 Europe had appropriated these animals to be the exclusive right
 of the sovereign of the state. This, it is said, was to avoid dis-
 turbances and quarrels, which would else have frequently arisen
 among individuals, contending about the acquisition of this spe-
 cies of property. The common law of England, like that of
 the rest of Europe, to cut up this root of dissension, vested the
 right and property of these animals in the king, or else in his
 representatives appointed and authorized by him, being usually
 the lords of manors.† Thus the lord proprietary of Maryland,
 being by his charter invested “with all and singular such and as
 ample *royal* rights as any bishop of *Durham* ever heretofore hath
 had,” and the bishops of *Durham* having been, prior to the sta-
 tute of 27 *Hen.* 8, ch. 24, possessed of all *Jura Regalia*,‡ (sav-
 ing allegiance to the crown,) among which royal rights that of game
 must have appertained to them, the lord proprietary of Maryland,
 therefore, must have been, in pursuance or in virtue of this clause
 in his charter, invested also with this royal right to all animals
feræ naturæ, since and then well known under the denomination
 of *game*, which were to be found within his province. This,
 perhaps, was the first instance of the exercise of this royal right
 by his lordship within his province. The state, since the revo-
 lution, has thought itself, it seems, entitled to this same prero-
 gative by succession to the sovereign power ; having made di-
 vers laws at different times for the preservation of the breed of
 wild deer, and for the protection of the fisheries, without which
 right they could not have legislated upon the subject, every ci-
 tizen being equally entitled to gain a property in them by occu-
 pancy.§

* “Council Proceedings from 1636 to 1657,” p, 45.

† 2 Bl. Com. 14, 414.

‡ 1 Bulstr. 160.

§ The birds, which were considered in England about this time, (according to
 lord Coke, *Co. Litt.* 233, a.) as fowls of the warren, in modern language called

In this year also, William Clayborne, who appears to have been at this time still a resident of Virginia, thought it proper to make his application, through the medium of an attorney, for a restoration of his property left by him on the isle of Kent at his departure. What inducement led him to this proceeding does not appear; but it strongly wears the appearance at this day of a bravado to the Maryland government, calculating on the approximation of confusion through the near approach of a civil war in the mother country.—By a letter of attorney, bearing date the 8th of August, 1640, he appointed “George Scovell of Nancimim, in Virginia, his true and lawful attorney to ask, demand, recover, and receive for him, in his name and to his use, all sums of money, debts, cattle, and tobacco debts, and every thing whatsoever to him due or payable from any inhabitant of the province of Maryland.”—In virtue of this authority, Scovell presented a petition to the governor and council of the following purport:—“That captain William Clayborne, at his departure from the isle of Kent, left an estate within your province, as your petitioner is informed, amounting to a good value; since which time divers inhabitants within your province, are possessed of the said estate, but by what right your petitioner knoweth not.—Your petitioner’s humble request therefore is, the premises considered, that your worships would be pleased not only to allow of your petitioner’s letter of attorney, but also to grant unto him free power and liberty, together with your worships’ furtherance therein, for the recovery of the aforesaid estate in the hands of any, in whom it shall be found.”

CHAPT.
III.

1640.

Clay-
borne’s de-
mand of his
property
within the
province.

“The answer” thereto is not long, but pithy, as follows:—

“What estate captain William Clayborne left with this province at his departure, undisposed of, on the 24th of March,

game, were “of two sorts, viz. *terrestres et equatiles*. *Terrestres* of two sorts, *sylvestres et campestris*. *Campestris*—as partridge, quail, rail, &c. *Sylvestres*—as pheasant, woodcock, &c.” Under this last head in Maryland we might rank wild turkies above mentioned,—a species of fowl, not inferior, perhaps, in the taste of the epicure, to the pheasant or woodcock. “*Aquatiles*—as mallard, heron,” &c. Either this last species of birds, (the heron,) must have vanished from our shores, or the taste of our modern sportsmen of Maryland must have varied from that of their ancestors, for these birds are not now held in any estimation.

The clause in the above commission to the justice of the peace, vesting in him powers equal to “two justices of the peace in England,” had, probably, relation to the then existing statutes of game, particularly those of 1 Jac. 1, ch. 27, and 7 Jac. 1, ch. 11, whereby the conviction of such offenders was vested in two justices of peace out of sessions.

CHAPT. 1637, the petitioner may know, that it is possessed by right of
 III. forfeiture to the lord proprietary for certain crimes of piracy and
 1640. murder, whereof the said William Clayborne was attainted the
 day aforesaid by judgment of the house of general assembly.
 If the petitioner can find out any of the said estate not possess-
 ed or held by that right, he shall do well to inform his lordship's
 attorney of it, that it may be recovered to his lordship's use;
 but if the said Clayborne, or any other to his use, have since
 the said day acquired any estate within the province, the law of
 the province, without any grant or furtherance of governor or
 commissioners, gives the petitioner or any other attorney of the
 said Clayborne, free power and authority to recover it, and,
 when it is recovered, such order shall be taken with it, as jus-
 tice shall require."*—We shall see, however, in a few years,
 Mr. Clayborne acting towards Maryland in a very different char-
 acter, than that of a petitioner.

An assem-
 bly called.

At this period also, the calling of another assembly of the
 province, to be holden in the autumn of this year, was resolved
 upon by the government. In pursuance thereof, writs of elec-
 tion were issued to the several *hundreds* of the province, autho-
 rizing them to choose *burgesses* for their respective hundreds for
 the next assembly. As these writs are the only documents ex-
 tant upon record, which unfold the constitutional principles of
 provincial government in its earliest progress, it will be proper
 to exhibit at least the substance of some of them.

"Cecilius, &c., to our trusty and well beloved William Brainth-
 wayte, our commander of our isle of Kent, greeting; Whereas
 we have appointed to hold a general assembly at St. Mary's on
 Monday being the twelfth day of October next, these are there-
 fore to will and require you, that without delay you assemble
 and summon all the freemen of that island at a certain time and
 place to be reasonably by you prefixed, and there cause them
 to make election of any one or more burgesses for that island,
 (not exceeding the number of four,) and to make true return of
 the party or parties so nominated and elected by the said freemen
 or the major part of them to our secretary, before the said
 twelfth day of October.—Given at St. Mary's on the 14th of
 August, 1640."

The writs of election to the several hundreds of St. Mary's

*These proceedings bear date in the record,—“21st August, 1640;” see
 “Council Proceedings from 1636 to 1657,” p. 48.

county, varied somewhat from the above; as thus:—"Cecilius, &c., to all the freemen of our hundred of St. Mary's, greeting; We do hereby summon you to be *before our secretary* at St. John's on Tuesday next at one of the clock after dinner to make election of one or two burgesses for that hundred for the next assembly.—Given at St. Mary's, 12th of September, 1640."—The like writ to the freemen of St. George's hundred to be *before the sheriff* at a certain place, (therein mentioned,) within that hundred. The like to those of St. Michael's hundred to be *before the constable* of that hundred. The like to those of Conception hundred, Mattapanient hundred, and St. Clement's hundred to be before the particular person named in their respective writs.

In virtue of the lord proprietary's prerogative before mentioned, of summoning, by *special writ*, "any gentleman of able judgment and quality;" which prerogative right seems to have been recognized by the act of the last session, (1638-9, ch. 1,) and more particularly designated by the bill of the same session, entitled, "an act what persons shall be called to every general assembly," such *special writs* were in pursuance thereof now issued to several gentlemen, requiring their attendance at the assembly.—One of them as follows:—

"Cecilius, lord proprietary, &c., to our trusty and well beloved Giles Brent, gent., treasurer of our province of Maryland, and one of our council, greeting; Whereas we have appointed to hold a general assembly at St. Mary's, on Monday being the twelfth day of October next, we therefore much relying upon your judgment and advice in that assembly, do hereby will and require you, that you repair in person to the said assembly at the time and place prefixed, there to advise and consult with us touching the important affairs of our province."

Another of these *special writs*, on account of its singularity, deserves to be mentioned.—"Cecilius, &c., to our trusty Cuthbert Fenwick, gent., attorney within this province of our right trusty councillor, Thomas Cornwaleys, greeting; Whereas we have appointed to hold a general assembly at St. Mary's on Monday the 12th of October next, at which assembly we could have wished to have had the presence and advice of our trusty councillor Thomas Cornwaleys, which being not to be presumed upon by reason of his absence, nevertheless for the respect we bear unto him, and out of our care that so great a member of our province may have his attorney there to take care of such things as may con-

CHAPT. cern him, therefore we do hereby authorize you to repair person-
 III. ally to the said assembly, there to have place, voice, and seat,
 1640. as our said councillor's proctor or attorney during his absence.
 Given at St. Mary's, 19th September, 1640."

Regular returns from the several hundreds, according to the before mentioned writs of election, appear to have been made, and directed to the secretary, specifying the names of the persons chosen as burgesses for their respective hundreds.

Their pro-
 ceedings.

In pursuance of these writs the assembly met on the 12th of October, at St. John's, when "the house being called, all the gentlemen summoned by special writ, and all the burgesses that were returned from the several hundreds appeared, except Mr. Fulk Brent, whose absence was excused by the governor."

Some other proceedings of the house immediately on their meeting appear to indicate their ideas of the origin of the authority and power of the house.

"First, was read that part of the commission, which concerns the holding of assemblies."—This must allude to the *commission* to the governor, of the 15th of April, 1637, before stated.

"Then was read his lordship's proxy to the governor for giving his assent;"—which must have referred to the letter from lord Baltimore to the governor, of August 21st, 1638, stated before with the proceedings of the last session.

"Then was read that part of the act of last assembly, which ordained the house of assembly;" to wit, the act of 1638–9, ch. 1, before stated.

The journal of this session, as it appears on our records, affords but little matter worthy of observation. One measure, which took place on this first day, (October 12th,) may perhaps be deemed to merit notice, on account of its exhibiting the apparently confused situation of the foreign trade of the province at this time. "A proclamation," (as it is called on the journal,) relative to this subject, was "issued by the house of assembly," (a singular mode of proceeding for a legislative body, and would therefore, be more properly called a *resolution*,) in the following terms:—"It is strictly prohibited, that no person whatsoever go aboard any pinnace or other vessel, wherein are any goods imported to be retailed, nor do treat or deal, or give intelligence to or with the skipper, factor, or any seaman in any such vessel, touching any goods buying, or the rates and quantities of tobacco, or want of goods within the colony, before liberty of trade proclaimed at the fort, nor then at any higher or greater

rate than shall be proclaimed, upon pain of such punishment as shall be thought fit by the house of assembly, and further it is prohibited, that no merchant, skipper, or other seaman, contract or deal for any goods with any inhabitant, nor sell or utter any, nor shall land at any place in the province, but at the governor's landing-place, afore license obtained from the lieutenant general upon such pain and loss as shall be likewise thought fit, whereof they are hereby required to take notice at their peril. Given at St. John's, this 12th of October, 1640.—Signed William Britton, clerk."*

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III.
1640.

Pursuant to this proclamation of the legislature, the governor (Leonard Calvert) issued his precept, on the same day, addressed—"To the sheriff of St. Mary's or his deputy," requiring him to repair on board a pinnace, therein mentioned, for the purpose of preventing offences against the above proclamation. However, on the last day of the session but one, mention is made on the journal, of this proclamation being "reversed."

The house did not agree to their "rules and orders," until the second day of their session; some of which rules illustrate the constitutional organization of the house.

By the first of them, "the lieutenant general" was "to be called the president of the assembly," that is, to act as speaker of the house.

By the second,—"*Ten* members of the house, whereof the lieutenant general to be always one, at any time assembled, with the clerk of the assembly, shall be a full house, except on the session-day it shall not be a full house under the number of *twelve*, as afore."

This, however, seems repugnant to the act made at the last session, entitled, "an act for establishing the house of assembly," &c., (1638-9, ch. 1,) since that act says,—"that any *twelve* or more shall be called the house of assembly;" which

*From this it appears, that the *secretary* of the province, (Mr. Lewger,) did not act as *clerk of the assembly* at this session, as he did at the session before; but Mr. Britton here appears in that character; and among the orders of the house on the first day of this session, it was "ordered, that the *clerk of the assembly* should have 5 shillings per day, and for every private draught, 12s;" but this *per diem* allowance of 5s. was altered on a subsequent day of this session to 50 lb. of tobacco per day.—This seems to afford us some probable *datum*, whence we may calculate the price of tobacco at this time, and the proportional rate when paid and received as a medium of commerce, which it bore to the current money of the province. If so, the nominal price of tobacco at this time in the province must have been ten shillings per hundred.

CHAPT. seems to imply that less than twelve should not make a house;
 III. and that twelve at least were requisite at all times to make a
 1640. house on every day of their session, as well as "on the session-day;" by which last expression must be meant the *first* day of the session.

By the fifth rule;—"Notice shall be given of the day of session, nine days before;" (This is obscure, but we may suppose it to mean, that after a prorogation or adjournment, notice should be given nine days before the first day of the next session;) "and at the session all the bills engrossed shall be read and severally voted, and such bills as are assented unto by the greater part of the gentlemen and burgesses shall be presented to the lieutenant general, and when he hath signed the bill it shall be recorded and published under the great seal of the province, and if the votes of the gentlemen or burgesses be equal the bill may not pass."*

Remarks
 on the acts
 of the ses-
 sion.

A few animadversions on the acts of assembly passed at these first or earliest sessions, seem to be indispensably necessary. They are, indeed, together with the few proclamations and commissions still extant upon record, the principal materials of a provincial history. Care will be taken, however, to avoid a reiteration of remarks upon acts similar in substance to those before commented upon.

The first of the acts passed at this session, entitled, "an act for church liberties," is nearly *verbatim* the same as the first section of the second act of the preceding session; but the next, entitled, "an act for uncertain goods," varies somewhat from the tenth section of the act just mentioned of the preceding session. The former act directed, that "the governor and council should appoint, how such goods *should be employed*;" but this act is more definitive, by vesting the right to such goods in the lord proprietary. It may be remarked here, that this act of assembly was considered by Mr. Bacon, when he compiled the laws of the province, in 1763, as a law then in force. It does not appear to have been repealed between that period and the revolution; when the continuance of all acts of assembly then in force, together with the common law, was recognized by the declaration of rights.† This act is, nevertheless, omitted by

* For the proceedings of this session of assembly see the journal thereof in the book of the council chamber, entitled, "Assembly Proceedings from 1637 to 1658," p. 136 to 147.

† Sect. 3.

the succeeding compiler of all the laws of Maryland,* being deemed by him, as we may suppose, abrogated by the revolution. It would seem, however, that the same principle, which vested the *real* property of the lord proprietary in the state, (as the *vacant lands* of the province, which were never *expressly* transferred to the state, either by the declaration of rights, constitution, or any subsequent law, would also have transferred all his rights to any *personal* property. But, be that as it may, the subject matter of the law can so seldom occur, that its operation can be of little consequence at this day.

CHAPT.
III.
1640.

The next law of this session, (1640, ch. 3,) “for providing against sudden accidents in the government, seems to be, in part, but a re-enactment of the 15th section of the act of the preceding session, (1638-9, ch. 2,) before commented upon. It makes further provision against as great an inconvenience, as the preceding part of the act, (should such an incident happen,) in the following manner:—“and in case the lieutenant general shall decease or be absent out of the province without nominating or substituting another in his room, the first councillor of state residing at St. Mary’s, shall exercise the office of lieutenant general in all points belonging to it until his return into the province, or that another be appointed by the lord proprietary.” It will be recollected, that the “ordinance” or commission from the lord proprietary to his brother Leonard Calvert, of the 15th of April, 1637, before stated, vested a power in the governor, in case of his “absence out of the province,” to nominate and appoint some other person, whom he should think fit, to be his lordship’s lieutenant general of the province, and in case of the failure of the governor to do so, that the councillors for the time being should nominate and appoint such lieutenant general in his room. The governor, on his visit to Virginia in 1638, as before noticed, accordingly twice availed himself of the power granted him by that commission. This act seems to provide a more effectual remedy for one of the inconveniencies before mentioned than the ordinance, inasmuch as dissensions might arise among the councillors, each of whom would probably be a candidate for the office, so as to prevent their appointment of any one, in case of failure of the governor to do it. The designation of the appointment of the eldest of them, as directed by this act, seems, therefore, to have been a prudent provision. It is to be observed,

* It is not inserted by Mr. Kilty in his compilation of the laws.

CHAPT. also, that the act guards against the inconvenience resulting from
 III. the *death* of the lieutenant general, a circumstance omitted in the
 1640. ordinance, unless it be supplied by intendment, as we have ventured to do, in the copy of that document herein before exhibited;* which we shall see arise on the death of the present lieutenant general, but which was happily guarded against by a commission of the lord proprietary previous to the incident.

Two other acts of this session; one "for prohibiting the exportation of corn;" and another, "for the planting of corn;" would seem at first to indicate an apprehension of a scarcity at this time of that necessary article of subsistence for the colony; but two bills, with the same title as that of the last mentioned act, one at each of the preceding sessions, had been passed; from which it may be inferred, that these acts, relative to corn, were intended only as a cautious regulation of that agricultural produce; and licences for exporting corn appear to have been frequently granted for several years back.† In pursuance of this last mentioned act, however, "for the planting of corn," we find that, during the succeeding crop in July, 1641, a special commission "to the sheriff of St. Mary's," was issued by the governor, "requiring him to repair to every several plantation within the several hundreds of St. Mary's, St. Michael's, St. George's, and Mattapanient, and there, by all means that he may, to inform himself, whether every hand planting tobacco *this crop* do plant and tend two acres of corn, as the ground shall be estimated by the deputy surveyor, who is to accompany him for that purpose; the names of the defaulters and the quantity of their deficiency to be returned by him to the secretary."‡

The "act touching tobaccos," of this session also, is the first *inspection* law, which appears to have been passed in Maryland. As this great staple of our former trade, and principal commodity of our agricultural produce, upon which formerly depended all the wealth of the province, is now happily ceasing to be in demand, and is gradually yielding to articles of more substantial value, the contents of this ancient inspection law will afford but little interest to the reader.§ It suggests, however, an animad-

* See note (VI.) at the end of this volume.

† Ante, p. 164.

‡ "Council Proceedings from 1636 to 1657," p. 56.

§ The reader will find an abridgment of this first Maryland *inspection* law, (made by the judicious Mr. Bacon,) in note (XL.) at the end of this volume.

version on a remark made by one of the oldest historians of Virginia, (a native of that province,) on the mischiefs accruing to Virginia from lord Baltimore's grant. He observes,—“that by this unhappy accident,” (that is, by the grant of the province of Maryland to lord Baltimore,) “a country, which nature had so well contrived for one, became two separate governments. This produced a most unhappy inconvenience to both; for, these two being the only countries under the dominion of England, that plant tobacco in any quantity, the ill consequence to both is, that when one colony goes about to prohibit the trash, or mend the staple of that commodity, to help the market; then the other, to take advantage of that market, pours into England all they can make, both good and bad, without distinction. This is very injurious to the other colony, which had voluntarily suffered so great a diminution in the quantity to mend the quality; and this is notoriously manifested from that incomparable *Virginia* law, appointing sworn agents to examine their tobacco.”* A remark made by Mr. Oldmixon,† on this passage just quoted, deserves to be here inserted:—“Whether the people of Maryland have not the same or the like complaints to make against the Virginians, is to be doubted, and that the industry and good management of that colony have set an example, even to her mother plantation, which it had been better with her if she had followed. We must leave this dispute to be decided by the gentlemen concerned in it.” Although this remark of Mr. Oldmixon might have resulted from a just resentment of Mr. Beverly's conduct towards him,‡ yet nevertheless it does not appear

* Beverly's Hist. of Virginia, B. 1, sect. 57, (edit. 1722.)

† Brit. Emp. in America, vol. 1, p. 239.

‡ These two gentlemen had a literary quarrel in England about their books. It appears, that while Oldmixon was compiling his work, (British Empire in America,) in the year 1703, the part of it relative to Virginia was shewn in manuscript to Mr. Beverly, a native Virginian of note, then in London, by the bookseller, who was the editor of it, in order that he should “overlook” and correct it. Displeased, as he says, with that part of the work thus shewn to him, he resolved himself to compile an account of Virginia, which should be published by itself, and not make a part of Oldmixon's work. This was accordingly done, before Oldmixon's work was published; so that this gentleman was enabled to borrow much from Mr. Beverly's Account of Virginia; retaining; however, as he says, such parts of his own previously compiled as rested upon other foundations than those of Beverly's work. How far it was fair among authors, for Mr. Beverly to anticipate Mr. Oldmixon, after the work of the latter was shewn to the former, will admit of much variance of opinion. It appears, that Mr. Oldmixon was vexed at this anticipation, and manifests his resentment at it in a variety of passages in his work. See the *prefaces* to each of these works.

CHAPT. to be destitute of foundation. Of what date this “incompara-
 III. ble” inspection law of Virginia was, we are not informed by the
 1640. historian last mentioned; but, according to the latest historian
 of that state,* “the original of the several laws that have been
 enacted (in Virginia,) concerning the inspection of tobacco,”
 was passed at the session of Assembly of that province, held in
 March, 1628.† This subject, he says, was “the first object of
 this body’s attention. The quality of their principal staple had
 become debased by the rage for producing a sufficiency to answer
 the increasing demands; and this deterioration had of late be-
 come so palpable, as to raise the clamors of the merchants, and
 to call forth the reproof of the king. Another evil, more im-
 mediately mischievous, was produced by this cupidity. The
 attention of the colonists to the articles of primary necessity, was
 sensibly relaxed; and they were alarmed all at once by the
 approaches of famine. To remedy this evil, an act was passed,
 limiting the culture of tobacco to so many plants per head; and
 sworn triers or inspectors were appointed to see, that the inten-
 tion of the legislature should be strictly carried into effect. The
 culture of corn was at the same time commanded under severe
 penalties.” Whether this was the “incomparable” inspection
 law alluded to by the historian, or not, or whether there might
 have been some more improved legislative regulation on this
 subject, passed between this date, (1628,) and the time when he
 wrote, (1705,) to which he might here refer, cannot be of much
 importance to the dispute. Such complaints, as those made by
 this historian, could apply only to the times previous to this
 Maryland inspection law of 1640. As soon as this law passed
 we may suppose the evils complained of to have ceased; for,
 we are to suppose the inspection laws of each province to have
 been equally salutary. There seems then to have been but little
 foundation, existing at the time when this author wrote, (for he
 speaks of the “ill consequence” then existing,) for that splene-
 tic regret, which he expresses, for the “unhappy accident” of
 lord Baltimore’s grant.

* Burk’s Hist. of Virginia, vol. 2, p. 24.

† Although the inspection law of this session of the Virginia assembly is thus
 said to be their original inspection law; yet it appears, that one of the *articles*
 of the first law now upon record in Virginia, (passed in 1624,) contains a regu-
 lation upon this subject in the following words:—“that men shall be sworn, in
 every plantation, to censure the tobacco.” See Burk’s Hist. Virg. vol. 1, p. 284;
 and Chalmers’s Annals, p. 64, who cites Stith, 318.

It is probable, that in imitation of the above mentioned policy of Virginia, "limiting the culture of tobacco to so many plants per head," a proposition was made in the first day of this session of the Maryland assembly, to limit the quantity of tobacco to be planted in Maryland; as appears from the following entry on the journal:—"Then was propounded some bill to be drawn for stinting the planting of tobaccos, but rejected." Soon after, however, another proposition was more successfully made in the house on the same day, as follows:—"Then was appointed a bill to be drawn for the destroying of unsound tobacco; which bill appears to have been the "act touching tobaccos" before mentioned. It may, perhaps, deserve notice, that the "president" of the assembly, (who was the governor, Leonard Calvert,) was among the dissentients to the bill.

CHAPT.
III.
1640.

One or two other occurrences of this session may also be mentioned. An instance again occurs at this session of the exercise of *judicial* powers by the house of assembly, which deserves notice principally on account of the unusual mode of commuting the punishment of the offender. The secretary of state, (Mr. John Lewger,) had, on the first day of this session, issued his writ to the "sheriff of St. Mary's," to "have the body of John Dandie, smith, before the house of assembly at nine of the clock this morning to answer to such crimes as on his lordship's behalf shall be objected against him." What these "crimes" were, does not appear; sentence of death, however, was passed upon him; but, on the tenth of May next succeeding, "upon the petition of a great part of the colony for the pardoning of Dandie, the governor exchanged the sentence of death into three years service to the lord proprietary, wherewith the said Dandie was well contented."*—In a subsequent document, bearing date June 12th, 1647, which purports to be a further pardon for John Dandie, it is stated, that "amongst other penalties he was adjudged to be *public executioner* within this province, but for his good services and particular fidelity to governor Calvert he was thereby remitted from all former penalties whatsoever."† There seems, however, to be some small error or omission here in the entry of this last mentioned pardon or remission; for, if he had "sentence

Judicial
powers ex-
ercised by
the assem-
bly.

* It ought to be observed here, that the lord Baltimore had one or more plantations or manors in the province, at this time, cultivated at his own expense and for his own immediate profit, on some one of which plantations, most probably Dandie was to serve, perhaps in his trade of a smith.

† "Council Proceedings from 1636 to 1657," p. 153.

CHAPT. of death" passed upon him, as appears by the records of this
 III. session, (of 1640,) he could not have been "adjudged" at the
 1640. same time "to be public executioner within the province." It is therefore to be understood, as having been one of the *conditions* of his pardon, that he should be "public executioner of the province," (an officer, whom it might, on account of the paucity of inhabitants, have been difficult to procure,) as well as serve his lordship on one of his plantations for three years. The common law authorised the king, and consequently the lord proprietary or his lieutenant, to pardon upon any condition or conditions whatsoever, which he might think fit, and the criminal would accept. It will be recollected, that by a bill of the last session, (1638-9,) entitled, "an act for the appointment of certain officers," the governor and council were authorised to appoint a *public executioner* of all *corporal* punishments.* They probably took this method of carrying the act into effect.

The other occurrence of this session deserving notice was as follows :—Mr. Thomas Adams, a member of this assembly from the isle of Kent, and who appears to have been a man of some note there, had uttered, most probably at the present session, disrespectful expressions concerning the lord proprietary. What these expressions were, does not appear. The journal however, states, that he was "for these indecent speeches touching the lord proprietary, censured to ask forgiveness of the lieutenant general; which he did." The reconciliation appears to have been complete on both sides; for, early in the succeeding year, (March 6th, 1640-1,) a special writ of pardon was granted to him, which set forth, "that for and in consideration, that Thomas Adams, one of our commissioners of our isle of Kent, gent., hath performed unto us acceptable service within our said island, and to the end he may be encouraged to do unto us and our heirs further faithful service within our said island and province, we do hereby fully acquit, remit, and pardon for ever unto the said Thomas Adams, all and all manner of *piracies* at any time heretofore committed by the said Thomas Adams against our peace and dignity within our said province."—From this it may be inferred, that Mr. Adams had been a coadjutor of Mr. Clayborne in his resistance to the lord Baltimore's authority in the isle of Kent, though now converted into a zealous friend to the lord proprietary.

* See ante p. 139.

This leads us to advert to some regulations made in the course of this year, relative to the lands held in that island. Many of the settlers there had received grants, of the lands possessed by them, from captain Clayborne. His claim being now probably deemed by the planters there ineffectual, they had ceased to cherish any further resistance to lord Baltimore's jurisdiction; and it is possible, that Mr. Adams had now become instrumental in allaying all former discontents. It was, therefore, thought to be proper at this period for the government at St. Mary's, to regrant new patents or grants of all such lands, as had been before granted by Clayborne, to the same persons, who held those lands under Clayborne's grants. This was accordingly done;* and in further regulation thereof a commission issued to the sheriff of the isle of Kent, bearing date the 7th of December, 1640, stating that—"Whereas, since our conditions of plantation, published in the year 1633, and since, divers persons have entered upon the isle of Kent and seated themselves, and taken up several parcels of land, whereby they became obliged to the rent reserved upon the said conditions,—these are, therefore, to will and require you to demand of every several tenant possessed of or claiming to any land possessed or claimed by every such tenant, viz. for every fifty acres twelve pence sterling or the commodities of the country; for every year that he hath been possessed of the same, for which twelve pence you may receive four pound of tobacco or one peck of wheat;* and whereas divers

* See the oldest record-book in the Land-office, *Lib.* No. 1, during the year 1640.

† If we may suppose these rates to have been fixed at the then *minimum* current price of tobacco and wheat within the province, we may take them as *data* to ascertain the proportional current value of these articles at this time in the province; which would be three pence per pound for tobacco, and four shillings per bushel for wheat. But, from this it would appear, that the current price of wheat was the same, or nearly so, in the province as it was in England. From the statute of 21 *Jac.* 1, ch. 28, sect. 8, (anno 1624,) it appears, that the current price of wheat at that time in England was thirty-two shillings per quarter, which is equal to twelve pence the peck, the value of the rents fixed by the commission. Hume, (in his Appendix to James the first's reign,) observes upon this, that the price of wheat, (as mentioned in this statute,) "though then regarded as low, would rather pass for high by our present estimation." The ascertainment of rents in produce at the above mentioned rates is not, however, *conclusive*, that such were the current prices of tobacco and wheat within the province at that time, but only *presumptive* evidence thereof. In like manner, in the bill, "for the authority of justice of the peace," in 1638-9, before stated, (p. 124,) the offender was to be fined "5 lb. tobacco or one shilling sterling," which, supposing that a shilling was meant as equivalent to 5 lb. tobacco, would make the price of tobacco at that time, about two pence farthing per lb. Tobacco must have fallen

CHAPT. persons are possessed of several parcels of land by virtue of a
 III. pretended grant from capt. William Clayborne, for the yearly
 1640. rent of *two capons*, our will is that from such tenants you demand no more for the time past than the said *two capons* for every year that the rent hath been behind, and from such as shall be willing to commute the said rent into some other commodities, that you may take for every two capons sixteen pound of tobacco or one bushel of wheat;* and if any shall refuse or delay to pay their said rents and arrears of rent due in manner as aforesaid, then we do hereby authorise you, and withal will and require you to distrain for the same upon any the lands, goods or chattels of the party or parties so refusing or delaying, and such rents, as shall be by you received by virtue hereof, make accompt thereof to our receiver general at St. Mary's, who shall satisfy you for your pains therein, whereof fail not," &c.†

1641. The Indians, inhabiting within the limits of Maryland, seem now to have been permanently fixed in their irreconcilable discontent at the intrusion of the colonists. They not only annoyed the exterior or frontier settlers of St. Mary's county, in the plunder of their live stock, but on the eastern-shore rendered themselves formidable by their hostile conduct towards the inhabitants of the isle of Kent. At the latter end of the preced-

at this time, (1640,) both in Virginia and Maryland, very much in its value, from what it was in Virginia in 1618, when it was at three shillings per pound. The increasing quantity of it, now annually grown both in Virginia and Maryland would probably occasion this.

* This seems to be additional proof, that articles of food were nearly of the same prices in Maryland at this time as they were in England. Hume, in his Appendix just before cited, states a regulation of the market with regard to poultry and some other articles, very early in Charles the first's reign, and observes,—“the prices are high.” Among other articles of poultry he mentions,—“a capon two and six pence.” I would add, that Shakspeare, (who wrote but a few years before the first emigration of the Maryland colony,) has affixed nearly the same price to a capon, in drawing his inimitable character of Falstaff, whom he makes to be very fond of that delicious fare. In the bill or “*tavern reckoning*” humorously picked out of his pocket when he was asleep, by Poins and Prince Hal, is the following charge :—“*Item, a capon, 2s. 2d.*”—Mr. Clayborne, when he made his rents payable in this way, most probably followed some old English usage, and might moreover have had somewhat of Sir John Falstaff's epicurean taste. Capons appear to have been then considered as a delicious article of animal food. Shakspeare makes *Jacques* describe a justice of the peace, (in *As you like it*, written in the year 1600,)

“In fair round belly, with *good capon* lined.”

But either our modern epicures have varied from their ancestors in their taste for luxuries, or our good house wives have acquired more humanity towards the male sex of their poultry; for, this dish is not now held in much estimation.

† “Council Proceedings from 1636 to 1657,” p. 51.

ing year, (1640,) the governor had authorised, by commission, the high constable of St. Clement's hundred, in St. Mary's county, to attend Mr. William Britton, gentleman, of that hundred, in demanding of the king or great men of some Indians, who had done him considerable injury in his swine, to make reparation to him, and warning them, that if such reparation be refused or delayed, that free liberty should be given to Mr. Britton, "to right himself upon any the persons or goods belonging to that town, by all means that he may."—Such petty plunders might be considered, indeed, as a natural result from the habits and customs of the American savages; but the inhabitants of the isle of Kent were threatened with more determined acts of hostility; insomuch that the governor was induced to issue, (on the 10th of July, 1641,) a proclamation to the inhabitants of that island of the following tenor:—"Whereas it is necessary at this present to stand upon our guard against the Indians, these are therefore to publish, and strictly to prohibit all persons whatsoever, that no man presume to harbour or entertain any Indian whatsoever after notice hereof, upon pain of such punishment as by *martial law* may be inflicted; and I do hereby authorize and declare it lawful to any inhabitant whatsoever of the isle of Kent, to shoot, wound, or kill any Indian whatsoever coming upon the said island, until further order be given herein."* The Indians thus in hostility to the inhabitants of the isle of Kent were most probably those denominated the *Ozinies*, whose principal residence or town seems to have been, according to Smith, at or near the confluence of the Corsica creek with the Chester river, in Queen Ann's county, and within fifteen miles from the Narrows or Strait, which separates the isle of Kent from the main. This tribe of Indians, according to Smith, in his History of Virginia, could then turn out, as he was informed, sixty warriors. Had these warriors been armed with fire-arms, they would have been a most formidable enemy, indeed, to the English inhabitants of the isle of Kent at that time, whose militia or fighting men did not probably exceed twenty-five in number, as appears from the number of voters thereon in the year preceding.†

From some cause, not apparent at this day, it was thought proper to call an assembly of the province about midsummer of this year. The *writs of summons* for that purpose, still extant

* "Council Proceedings from 1636 to 1657," p. 52 and 56.

† See ante p. 100.

CHAPT. upon the records, expressly mention that the session was to be
 III. "held by prorogation;" from which it would appear, that the
 1641. assembly held in the preceding year, (1640,) had not been *dissolved*, but only *prorogued*. It is difficult, however, to reconcile this with the new elections, which took place immediately preceding the present session, in the several hundreds; as appears from the several *certificates*, returned to this assembly, and signed by the individual freemen of each hundred, designating the person by name, whom they had chosen as a burgess for their hundred. These certificates were, (according to the orders of the house, it seems,) read on the first day of the session, which was the 5th of August. One of them, as it indicates a material change in an important constitutional principle of the provincial government, requires notice. Mr. Thomas Gerard had, in the year 1639, obtained a grant of St. Clement's manor, as before mentioned,* which manor comprehended very nearly the whole of St. Clement's hundred. But, he being absent from St. Clement's hundred, perhaps out of the province, at the time of the election of a burgess for that hundred, which took place preceding the session of 1640, the freemen of that hundred certified, in the return made by them to that session, that "being but a small company in number they had made election of lieutenant Robert Vaughan as a burgess for that hundred, *who had been left and constituted Mr. Thomas Gerard's attorney.*"—Among the *writs of summons* issued for this session of 1641, one was addressed "to Thomas Gerard, lord of the manor of St. Clement's, gent.,"—requiring him to repair in person to the house of general assembly. This seems to have been in conformity to the prerogative right of the lord proprietary, as before mentioned, of summoning "gentlemen of able judgment and quality" to a seat in the assembly. But besides the writ of summons to Mr. Gerard, it appeared, on reading the certificate or return of election for St. Clement's hundred, that the freemen of that hundred had also elected him as their burgess for that hundred.—"Whereupon,"—(as the entry is in the record,†) "Robert Vaughan (then appearing for the said hundred) was discharged of his voice and seat; and *demanding to have voice in his own person* was refused." This seems to have been a legislative recogni-

* See before, p. 167.

† See the record book in the Council Chamber, entitled, "Assembly Proceedings from 1637 to 1658," p. 158.

tion of the total abolition of the right claimed by every freeman of the province, as before observed upon at the first settlement of the province, to a seat in the house of assembly, and which abolition appears to have been in pursuance and virtue of the act of 1638, (1639, N. S.) ch. 1, before referred to; by which act the several persons elected and returned, (pursuant to the writs issued,) should be called burgesses, and supply the place of all freemen consenting to such election, in the same manner, and to all the same intents and purposes, as the burgesses in any borough in England, in the parliament of England, use to supply the place of the inhabitants of their respective boroughs.”*

This assembly continued in session but a few days, and enacted only three laws; two of which require some notice. The first of them, entitled, “an act against fugitives,” was excessively severe, and beyond any modern idea of the due proportion between crimes and punishments. This act made it “felony of death, together with forfeiture of lands, goods, &c., for any *apprentice-servant* to depart away secretly from his or her master or dame, with intent to convey him or herself away out of the province; and for any other person that should willingly accompany such servant in such unlawful departure; unless his lordship, or his lieutenant general, should think proper to change such pains of death into a servitude not exceeding seven years.” This exceeded the punishment annexed to the same or a similar crime under the whimsical description of—“stealth of one’s self,” to which the benefit of clergy was allowed by the bill, entitled, “an act allowing book to certain felonies,” of the session of 1638–9, as before stated.† It is to be observed, however, that a clause appears on the journal of the house, of this session, which seems to have been intended by the legislature as an explanatory declaration of their meaning as to one part of this

Some few
acts passed
therein.

* The following certificate returned to this session from Mattapanient hundred, in St. Mary’s county, illustrates the mode, in which the freemen of these times exercised their important right of suffrage.

“MR. FENWICK.—We whose names are hereunder written do desire you to answer for us at the parliament, and we shall be much beholding unto you for the same.

Richard Gardner,
Richard Lustick,
Lewis Froman.”

See a document similar to this certificate, and nearly cotemporary as to date, which occurred in England, inserted in note (XLI.) at the end of this volume.

† See before, p. 123.

CHAPT. "act against fugitives."—"It was declared, that receiving of a
 III. runaway servant shall not include felony or misprision of
 1641. felony."*

The next act, entitled, "an act for measures," seems to be too short and obscure for the importance of the subject. A bill, entitled, "an act for measures and weights," was among those "engrossed" at the session of 1638–9, as was stated in the preceding chapter; but as nothing appears, relative to that subject, in the principal act "ordaining laws for the government of the province," (ch. 2,) the interference of the legislature might now possibly have been deemed again necessary.†—On this subject it may be observed, that the regulation of weights and measures appertained by the common law to the prerogative of the crown, and accordingly, even prior to the conquest, the standards of weights and measures were kept at *Winchester*; and it seems, that by the laws of king Edgar, near a century before the conquest, there was an injunction that the one measure, which was kept at Winchester, should be observed throughout the realm.‡ In *Magna Charta* also, (ch. 25,) it is enacted, that "there should be but one measure throughout the realm; and that it should be of weights as it was of measures."—If the Maryland colonists, therefore, took with them, on their first emigration, the benefits of the common law and of magna charta, there could not be a more important article thereof for their adoption than the regulation of weights and measures. It is true, that *Montesquieu*, (in his *Spirit of Laws*,) says, "It is a mark of a little mind in a legislator, to attempt regulations of this kind." But this mode of thinking seems to exhibit an example of that inattention to the convenience and comfort, and consequently the happiness, of the people generally, so observable in France under all their governments, even under that of their republic. On the other hand, these minute attentions of an English parliament to the domestic

* The words—"apprentice-servant," in this act of 1641, ("against fugitives,") varies from that of 1638, which uses the word "servant" only.—It is almost unnecessary to mention, that the word "servant" in these acts, and indeed in all the earlier records of the province, means exclusively—a white *servant* never being applied to negroes, who were properly called—*slaves*; as is frequently now done among the politer class of people in the state, copying therein, as usual, English customs and manners.

† As the regulation of weights and measures forms an important portion of the science of political economy, in order to assist any future philosophical economist in the investigation of this subject, the act above mentioned is inserted at large in note (XLII.) at the end of this volume.

‡ 1 Bl. Com. 274.

policy of the nation, form a principal groundwork in that civil liberty, which that nation enjoy in such a superior degree to any other. In counteraction to this—certainly weak remark of Montesquieu, it may be observed, that the execution of the laws relative to weights and measures was esteemed among the Romans of such importance to the public, that it was committed to the care of some of their most dignified magistrates—the curule ediles.* But a more pertinent reply to this remark of Montesquieu, is made by Mr. Justice Barrington, (in his *observations on the ancient statutes*.)—“He should rather have contended,” says he, “that it does not shew wisdom to attempt what appears, by long experience, to be impracticable, though in theory it seems to be attended with no great difficulties, and much to be desired for general convenience: with us (in England) it hath occasioned at least six different statutes, all of which have proved ineffectual.”—It is proper to observe, that one of these statutes on this subject was made in the same year with this act of assembly, of 1641.† Among the numerous grievances complained of in England, and which the *long* parliament, which had commenced its session on the third of November, 1640, had undertaken to redress, were those resulting from the “inequality of weights and measures,” together with the improper exercise of the office of *clerk of the market*, who had a general inspection over the weights and measures throughout the kingdom. This parliament, therefore, by the statute of 16 *Car.* 1, ch. 19, enacted, “That from henceforth there shall be but one weight, one measure, and one yard, according to the standard of the exchequer, throughout all the realm;” and transferred the former power of the clerk of the market to the mayor, or other head officers of the cities, boroughs, and towns-corporate. The “standard of the exchequer” was, as to the bushel, the same as the *Winchester* measure, at which last mentioned place the standard had been kept prior to the conquest, as before stated.

CHAPT.
III.
1641.

* 4 Bl. Com. 274.

† The remarkable coincidence of time in the passing of the statute of 16 *Car.* 1, c. 19, here alluded to, and our act of assembly of 1641, ch. 2, is not unworthy of notice. The king gave his assent to the statute on the tenth of August, 1641, and our act was passed on the twelfth of the same month and year. The progress of civilization in a colony generally keeps pace with that of the mother country; but where the redress of a grievance is long delayed in the latter, a colonial legislature of the former, equally sensible of its effects, will sometimes precede the parent country in applying a remedy.

CHAPT.

III.

1641.

Upon reflection it would be improper to pass over, without some notice, a material alteration made in the discharge of the ministerial duties relative to the probate of wills and granting administrations, by the other only remaining act of this session, entitled, "An act for causes testamentary." It will be recollected, that Mr. Lewger, the secretary, was appointed early in the year 1638, "commissioner in causes testamentary to prove the last wills and testaments of persons deceased, and to grant letters of administration." Prior to this, it would appear, that the governor and council, sitting as a county court, exercised all the *ministerial* as well as *judicial* duties of an ecclesiastical court, relative to the probate of wills and granting of administrations;* but, on this last mentioned appointment of Mr. Lewger, it is probable, that these *ministerial* duties devolved upon him, while the county court retained the *judicial* jurisdiction over controverted cases in relation to the validity of wills and the right to administration. The act of 1638-9, ch. 2, sect. 7, by enacting that "the secretary shall prove wills and grant administrations, and use, &c., all power, &c., necessary thereto,"†—seems to have confirmed to him these ministerial powers, while the bill, before stated, entitled, "An act for the erecting of a county court,"‡ expressly vests most of the judicial jurisdiction of an English ecclesiastical court in the then only county court of the province, which was, at the same time, the provincial court. This arrangement appears to have so continued, until this present act of 1641, ch. 3, entitled, "An act for causes testamentary," in which was inserted an express clause, that this act was "to *revoke* any former law concerning causes testamentary." The first and only material section was as follows:—"Whereas the laws of this province now in force have not sufficiently provided for the disposing of administrations and making just appraisement of the goods of parties deceasing within this province for remedy be it enacted by the lord proprietor of this province of and with the assent and approbation of the freemen of this province, that the lieutenant generall or in his absence his deputy or otherwise the first councillor resident in the county shall prove wills and grant administrations and exercise all temporal jurisdictions to testamentary causes appertaining, and shall doe

* See before, p. 91.

† See before, p. 144.

‡ See before, p. 128.

or cause to be done right to all persons in all such causes according to the law of the province, and in defect thereof according to the law or laudable usage of England in the same or like cases, and where the same is uncertain or doubtful then according to equity and good conscience.”* A tribunal, distinct from the county court, appears to have been hereby erected, clothed with the “temporal jurisdictions to testamentary causes appertaining,” which were exercised by an ecclesiastical court in England, and moreover with the ministerial duties of proving wills and granting administrations. Whether the secretary continued to act as the “deputie” of “the lieutenant generall,” in the discharge of the same ministerial duties in this respect as before, does not appear. As he seems to have acted on all occasions, as the right arm of the governor, it is probable, that he did, for in a little more than a year from the passage of this act, we shall find him created by the same commission, which reappointed him secretary, “judge of all causes testamentary and matrimonial within the province.”

CHAPT.
III.
1641.

This short session of assembly was closed on the twelfth of August by prorogation to a future day. The entry on the record is thus—“The house prorouged by the lieutenant general in audience of the house till the next Monday after twelfth day, which shall be in the year 1642.” As the English Catholics sometimes followed the Gregorian calendar in their dates, there is no necessity to suppose an error here in the manuscript as to the year, but that the day on which the house was to meet again by prorogation, was some time about the middle of the January then next following. But, in the mean time, it seems that the governor thinking it proper to call the assembly again before the day to which it stood prorouged, issued his proclamation on the 18th of October for it to be held on the 29th of the same month. He, being absent however about that time, “out of the province,” as is stated, “the secretary in his absence prorouged the day of assembly until the twentieth of March following.” Notwithstanding this prorogation by the secretary, the governor appears to have deemed it proper to issue his proclamation also for calling an assembly;—“appointing to hold an assembly on the twenty-first of March next at St. Mary’s fort, and therefore every hundred to choose and send one or two burgesses to come to the said assembly, in such manner as hath been accustomed, and to take notice

1642.

* Liber C & WH. p. 73.

CHAPT. thereof at their peril. Given at *Kent fort*, 12th January, 1641.”*

III.

1642.

Several *writs of summons*, according to former practice, were issued to several gentlemen by name to attend the assembly.† A writ also issued to the sheriff of St. Mary’s to assemble the freemen of each of the hundreds; viz: St. Mary’s, St. Michael’s, St. George’s, and Conception *alias* Mattapanient hundred to choose burgesses. Also a writ to the constable of St. Clement’s hundred to assemble the freemen of that hundred for the same purpose. Some variance is observable here from the practice of former elections, in which the writs issued to the freemen themselves of each hundred. But the writs for such purpose as now issued to the sheriff of the county was more conformable to the English law, and what was subsequently the usage of the province.

But notwithstanding these apparently regular proceedings for the election of burgesses, according to the constitutional law of the province before mentioned, the governor was induced to issue another proclamation, “published and proclaimed by the sheriff at the fort at St. Mary’s on the second of March,” (1642, N. S.) and a copy thereof sent to Kent on the thirteenth; the tenor of which proclamation seems to be in direct repugnance to what had been, to all appearance, permanently settled by the constitutional act of assembly of 1638–9, ch. 1, as the representative system of the government.

“Proclamation.—By the lieutenant general.—These are to publish and proclaim to all persons, inhabitants within this province, that I have appointed to hold a general assembly of *all the freemen* of this province on Monday being the one and twentieth day of this instant month, and therefore do require *all freemen whatsoever* to take notice hereof, and either to repair personally to the said assembly at the time and place aforesaid, or else to appoint and depute some other for their *proxy* or deputy during the said assembly there to consult and advise, touching the enacting of new laws and other important affairs of the pro-

* “Assembly Proceedings from 1637 to 1658,” p. 166.

† As these writs, by the established law before mentioned, were to be sent to “gentlemen of able judgment and quality,” mention of the names of those gentlemen to whom these writs were sent on the present occasion, lets us into some knowledge of the men who were considered as the leading characters in the province at this period of time: viz. Mr. Giles Brent, Thomas Cornwaleys, esqr., Mr. Fulk Brent, Mr. John Lewger, Mr. Thomas Greene, Mr. John Langford, and Mr. Thomas Gerard.

vince. Given at St. Mary's the 2d of March, 1541; signed Leonard Calvert."* CHAPT.
III.

1642.

We are to infer from this proceeding of the governor, as also from the complexion of some proceedings of the assembly at the session now to take place, that the spirit of discontent, which had now reared itself to such a height in the mother country, as to have placed the king and his parliament nearly in actual hostility to each other, had passed the Atlantic, and had diffused itself among the colonists of Maryland. It seems to afford some ground to suppose, that although the colony was originally intended by its founder as an asylum for Catholics, where they might enjoy their religious liberty without interruption, yet, as some few puritans, or protestants at least, had, as before mentioned, in 1638, been admitted into the colony, so by this time probably their number had so much increased as to create a formidable power not easily to be controlled by the feeble exertions of a provincial government. The governor might, therefore, be so far influenced by some such discontent of the colonists manifest by them at this time, as to acquiesce in their unwillingness to trust their affairs in the hands of burgesses or representatives; and to permit them to assemble as in a state of pure democracy, every freeman the representative of himself.

The situation of Ireland at this time, also, might have had some influence in the affairs of the province. The most formidable insurrection of the Catholics that ever took place in that kingdom, occurred in October of the preceding year, (1641,) and forty thousand protestants, as it is said,† were in a few weeks massacred by them with the most horrible circumstances of cruelty. It is a singular fact, however, that a little prior to this insurrection the Catholics and Puritans of Ireland appear to have formed a coalition against the royal party and English church. In pursuance of which, the committee of the Irish parliament appointed, in the year 1640, to carry the remonstrance against the earl of Stafford to England, was composed “of *vir-*

* At the foot of this proclamation, as on the record, is the following note:—“Published and proclaimed by the sheriff at the Fort of St. Mary's, the 2d of March, 1641.—The like proclamation was sent to Kent, 13th March.”—See “Assembly Proceedings from 1637 to 1658,” p. 170.

† In the declaration of both houses of the English parliament, they state the number of protestants massacred to have been 154,000. (See Rapin's Hist. Tindal's edit. vol. 10, p. 235;) but Hume, (in his Hist. ch. lv.) says, that “by the most moderate, and probably the most reasonable account, they are made to amount to 40,000.”

CHAPT. *ulent Papists* and rigid Puritans;”* and even in the midst of the
 III. insurrection, Sir Phelim O’Neal, a descendant of one of their
 1642. aboriginal kings or cheiftains, and leader of the Ulster insurgents, “declared that he acted by authority of the English parliament.”† The conduct of the Irish Catholics could be imputed only to their hopes of re-establishing the Catholic religion on the ruins of the English church and state.

It seems extraordinary, however, that, amidst all this confusion in both Ireland and England, history does not present us with the slightest mention of the conduct of our lord proprietary—Cecelius, lord Baltimore. Being an Irish peer, and taking his title from a place called “*Baltimore*, in the county of *Longford*,”‡ one of those in which the insurrection first broke out, and, being also of the Catholic religion as his father had been, it was to be expected, that a man of his rank would have appeared in some character amidst the bustle of the times. It is probable, however, that being a prudent and cautious man and bound by gratitude to the king for uncommon favours to his father and himself, he now remained quiet in England as a private gentleman, unconnected with the excesses of either the Catholics in Ireland or the Puritans in England. This is rendered more probable, by the circumstance of his having the young earl of Ormond as his proxy in the session of the Irish parliament of 1634,§ a nobleman who was one of the sincerest friends king Charles had then in Ireland, and alike opposed to popery and puritanism. It may be added, that lord Baltimore might have been now particularly affected by the insurrection in the county of *Longford*, the more immediate or particular cause of which is said to have been the peculiar injuries sustained by the native Irish of that county by the plantations established there by king James,|| and which plantations, might have been part of the estates of lord Baltimore. Further additional causes for lord Baltimore’s neutrality during the civil war might be inferred from the general conduct of the English Roman Catholics at that time as to the king’s cause. The popish lords in England had about

* Leland’s Hist. of Ireland, vol. iii. p. 62.

† *Ibid*, p. 119.

‡ There is a town called *Baltimore*, in the county of *Corke*, in Ireland; but in *Beatson’s* Political Index, vol. iii. p. 147, his title is stated, as above,—“Baron Baltimore of Baltimore, in the county of *Longford*.”

§ Leland’s Hist. of Ireland, vol. iii. p. 19.

|| Leland’s Hist. of Ireland, vol. iii. p. 117.

this time, (1642,) withdrawn themselves from the English house of peers. Although this was said to have been done, to prevent “aspersions upon the votes of that house,”* yet it might have been in part the result of their indifference at least, if not hostility to the king’s cause. There is some evidence, however, of their hostility thereto. It is assigned by a cotemporary and venerable historian,† as a probable reason, why so many papists espoused the cause of the Puritans and entered into the parliament’s army, that the English Catholics fully expected, that the Puritans, if they succeeded, would allow “liberty of conscience for all religions.” A fatal delusion! From the same authority we learn also, that the French ambassador, at that time in England, used his utmost endeavours to persuade the English Catholics, not to join the king’s cause.‡ We are further informed also, that at the battle of Edge-hill, which occurred this year, on the 23d of October, (1642) several papists were taken prisoners by the king’s army, and some popish priests found among the slain.§ To this general conduct of the English Catholics there were, however, some exceptions; one of which deserves to be here particularly mentioned, inasmuch as it tends to elucidate with some probability the political character and conduct of our lord proprietary at this period of time. Cecilius, lord Baltimore, had married lady Ann Arundel, the daughter of Thomas Lord Arundel of Wardour. This ancient family, (the Arundels,) numerous and wealthy in the west of England, at the time we are now treating of, were descendants from *Roger de Arundel*, who came over to England with William the Conqueror, (*anno* 1066,) and who was rewarded by him for his services with twenty-eight manors in Somersetshire after the conquest. Notwithstanding the reformation in England, the family appears to have continued of the Roman Catholic religion, though probably at times covertly and secretly so; and, as James the first always professed to bestow his honours indiscriminately upon any of his subjects, who deserved them, without regard to their religion, the eldest branch of the Arundel family, Thomas above mentioned, was created by him, in the year 1605, baron Arundel of Wardour in Wiltshire. Accordingly, as in gratitude they ought, the whole family appear to have been faithful and zealous in behalf of king Charles through

* Rapin’s Hist. Eng. (Tindal’s edit.) vol. x. p. 85.

† Lord Clarendon, in his Hist. (folio edit.) p. 250.

‡ *Ibid*, p. 367.

§ Rapin’s Hist. England, Tindal’s edit. vol. x. p. 116.

CHAPT. the whole of his distresses; and lord Arundel of Wardour, whom
 III. we may suppose to have been either Thomas the first lord Arun-
 1642. del above mentioned, or his eldest son and heir, most probably
 the latter, is stated to have been severely wounded at the battle
 of Lansdown in the service of the king in the year 1643. Ano-
 ther branch of the same family, Richard Arundel of Trerise in
 Cornwall, who with his aged father, eighty years of age, in the
 year 1646, so nobly defended Pendennis castle, near Falmouth,
 in Cornwall, the last refuge of royalty in the first Charles's reign,
 was, by the second Charles, on his restoration, created also ba-
 ron Arundel of Trerise in Cornwall. The old gentleman, with
 his four sons, two of whom were killed in battle, had all em-
 barked early in the contest in behalf of their sovereign's cause.
 As their conduct was an exception to the general demeanor of
 the English Roman Catholics, so their reward on Charles's re-
 turn was an exception to his well known general ingratitude to
 his best friends. That the Arundel family constantly afterwards
 continued of the Roman Catholic religion, may be inferred from
 the circumstance, that Henry, lord Arundel of Wardour, whom
 we may suppose to have been the son of Thomas above men-
 tioned, was one of the popish lords, who were sent to the tower, at
 the time of what is called the popish plot in the reign of Charles
 the second in the year 1678. From all these circumstances it
 may be inferred, that, although lady Ann, (afterwards lady Bal-
 timore,) is said to have died in the year 1639, yet the influence
 of the Arundel family might have continued to prevail with lord
 Baltimore, so as to induce him, if not to take part in behalf of
 the king, yet at least to remain neutral and quiet during the civil
 war.

Their pro-
 ceedings.

On the day appointed, the twenty-first of March, the assem-
 bly met; forty-eight members, an unusual number, being pre-
 sent; six of whom had proxies for thirty more; and two gen-
 tlemen,—Mr. Lodington and Mr. Thompson,—“were admitted
 for the proxies of *all* the inhabitants of Kent.” From these
 circumstances, it would seem, that they did not assemble as the
 delegates or representatives of the people chosen by the freemen
 of each hundred of the province, as at the former session, but
 as an aggregate assembly of all the freemen of the province, in
 their own individual rights, except the freemen of the isle of
 Kent, and those, who, instead of attending themselves, consti-
 tuted some other freeman, who did attend, as their proxy.

The first business, which appears to have occupied the attention of the house, bespeaks the political sentiments of the people of the province; and demonstrates, that the fanaticism of politics, as well as that of religion, will penetrate even the seclusion of a wilderness. Until the passing of the statute of 16 *Car.* 1, ch. 7, (in May, 1641,) it had ever been deemed the undoubted prerogative of the king to *prorogue* or *dissolve* his parliament, whenever it appeared to him proper so to do. Among many other lawless exertions of the royal prerogative, Charles had undoubtedly exercised this branch of it in a most unjustifiable manner, particularly in the dissolution of the two preceding parliaments prior to the one now in session. The present parliament now sitting, denominated the long parliament, having gained a complete ascendancy over the power of the crown, and become enabled to dictate to the king whatever statutes they thought proper to be enacted for the security of the rights of the people and the privileges of parliament, among others which they prescribed to him, in the first year of their session, procured his assent to the statute just above mentioned, entitled, “an act to prevent inconveniences by the untimely adjournment of parliaments.” By this statute the king renounced his power of either *proroguing* or *dissolving* the parliament then sitting, so that they hereby became a permanent body, subject only to their own adjournment, prorogation, or dissolution; and remained so until Cromwell, with a file of musqueteers, in the year 1653, marched them out of the house. A year had not quite elapsed after the passage of the statute, (although sufficient time intervened for the spirit, which dictated it, to cross the Atlantic,) before our colonists, in *their* little parliament assembled, undertook to imitate the conduct of their great prototype—the legislature of the mother country; though as it appears to us at this day, without any of those provocations, which the exercise of the royal power in England had too unhappily afforded. Our assembly accordingly, on the first day of the session, prior to any other business, as it appears, made the following resolution, as it is entered on the journal of the house:—“It was declared by the house, that the house of assembly may not be adjourned or prorogued but by and with the consent of the house.”—It will be recollected, that the last session of assembly had been closed *by prorogation by the lieutenant general*, but no circumstance appears to have attended that fact, from which we could

CHAPT. even infer any inconvenience to the people or cause of dissatis-
 III. faction. It was an exercise of the lord proprietary's prerogative,
 1642. which had been used and practised at every preceding session of
 assembly of the province. Nay indeed, at the first session, of
 which any record remains, (in 1637-8,) the house appears to
 have been even "adjourned" from day to day by the "president,"
 that is, by the governor or lieutenant general, who acted as speaker
 or president of the house.* It may not, perhaps, be useless to
 mention, that according to the law of parliament in England,
 (which is, indeed, a part of the common law of England,) the
 difference between an *adjournment* and a *prorogation* of parlia-
 ment is,—that "a *prorogation* is the continuance of the parlia-
 ment from *one session to another*," but "an *adjournment* is a con-
 tinuation of the session *from day to day*." The former is done
 by the royal authority, the latter by the authority of each house
 separately every day, though sometimes also for a fortnight or a
 month together.† Although this prerogative of prorogation was
 not granted to the lord proprietary by his charter in *express*
words, yet such power may be fairly inferred from the tenor of
 that clause therein, which confers on him legislative powers.—
 "Know ye, that we do grant unto the said now baron and to his
 heirs, for the good and happy government of the said province,
 free, full, and absolute power, by the tenor of these presents, to
 ordain, make, and enact laws, according to their sound discre-
 tions, of and with the advice, assent, and approbation of the
 freemen of the same province, or of the greater part of them, or
 of their delegates or deputies, whom we will shall be called to-
 gether for the framing of laws, when, and as often as need shall
 require, by the aforesaid now baron of Baltimore and his heirs,
 and in the form which shall seem best to him or them."—"So
 nevertheless, that the laws aforesaid be consonant to reason, and
 be not repugnant or contrary, but, (so far as conveniently may
 be,) agreeable to the laws, statutes, customs, and rights of this
 our kingdom of England."—Now, although the *form of calling*
the freemen together to make laws is hereby left to the discretion
 of the lord proprietary and those freemen, yet, as the saving
 clause, at the end of the section, provides, that those laws shall
 be consonant to the laws of England, it is no strained construc-
 tion, to say, that even the *form of making* those laws, that is,

* See the proceedings of the session of 1637-8, stated before, in p. 59 and 63.

† 1 Bl. Com. 186.

of adjourning, proroguing, or dissolving such assembly of the freemen, shall be also consonant to the laws, &c. of England. In short, that English parliamentary usage, or the law of parliament, shall be adopted by the provincial legislature. It cannot be too often repeated, that from this close imitation of the English constitution, throughout all the other provincial governments of America, as well as Maryland, have resulted all these free political institutions, of which the United States can now boast.

CHAPT.
III.
1642.

The hostilities, which still existed between our colonists and the Indians, occasioned some proceedings in the assembly relative thereto. "A bill for the expedition against the Indians," was, on the second day of this session, introduced into the house, though it does not appear to have passed into a law during this session. Mention of it, however, is made on the journal in the following words:—"Then was read the bill for the expedition against the Indians, and voted by the greater part, that it was not to be left entrusted to the discretion of the lieutenant general and council."—Why this jealousy was entertained against the governor and council, is not to be satisfactorily accounted for. Causes for it might have existed, of which our scanty records of these times afford no explanation. In the absence of any evidence of other causes, it is not improper to suggest, that the dispute, which then prevailed between the king and parliament, relative to the right of commanding the *militia*, was at the bottom of this vote of the assembly. This subject will occur more fully hereafter.

Religious discord also,—that horrible hydra with its hundred heads,—seems to have now first reared its crest within the province. The petty bickerings between Cornwaleys's servants, before mentioned, could wear no serious aspect. The English Catholics might have still indulged themselves with the pleasing vision of having carved out, in the forests of Maryland, a happy asylum for all the persecuted of their sect. But, as it is probable, that they had not the power of excluding the settlement of *Protestants* within their colony, it being subject to the mother country, they soon found themselves liable to the intrusions and disturbances of heretic adventurers from the contiguous provinces as well as Europe.

Religious
dissensions

So zealous and firm had the colony of Virginia hitherto been in the support of the church of England, that shortly after the arrival of Sir William Berkeley, as governor of that province,

CHAPT. (which was in 1639,) several laws had been made against the
 III. Puritans, "though there were as yet none amongst them ;" but by
 1642. way of anticipation,—“to prevent the infection from reaching the
 country;”* and so rigorous were these laws, as well perhaps in their
 execution as their tenor, that “none but conformists,” (it is said,)
 “in the strictest and most absolute sense, were permitted to reside
 in the colony.”† Some few Puritans, however, must have se-
 cretly lurked in that province at this time ; for, in the year 1641, as
 we are informed, Mr. *Bennet*, (then of Virginia,‡ and without
 doubt, a zealot of the puritanic sect of congregationalists,)
 “went to Boston, in New England, to desire, in the name of
 some other gentlemen of Virginia, that two or three ministers
 might be sent to them.”§ To this purpose Mr. *Bennet* carried with
 him letters from several pious people in Virginia,” to the minis-
 ters of New England, earnestly soliciting a supply of faithful
 ministers. At a lecture in Boston three ministers were agreed on,
 for the solicited mission.|| They were sent in the present year,
 (1642,) with letters of recommendation from the governor of
 Massachusetts to the governor and council of Virginia. Al-
 though they were kindly entertained by private persons, as it is
 said, probably by those who sent for them, yet their residence in
 Virginia was short, for they returned the next summer. In this
 same year, in consequence most probably of these movements
 of the Puritans, the assembly of that province passed an act to
 prevent dissenting ministers from preaching and propagating
 their doctrines in that colony.¶ In virtue of this law, as it

* *Beverly's Hist. of Virg.* p. 51.—*Burk's Hist. of Virg.* vol. 2, p. 75.

† *Burk's Hist. of Virg.* vol. 2, p. 67 ;—who exemplifies this in the case of one *Stephen Reck*, who, about this time, (1642,) was set in the pillory two hours with a label on his back expressing his offence, fined £50, and imprisoned during pleasure,—for saying, his majesty was at confession with the lord Canterbury.

‡ This is probably the same Mr. Richard Bennet, who subsequently, as we shall see, was one of the commissioners, appointed by the council of state in England, in the year 1651, “to reduce all the plantations within the bay of Chesapeake to their due obedience to the parliament of the commonwealth of England ;”—which they accordingly executed in 1652 ; and whose lineal descendant in Maryland became afterwards the wealthiest subject, as it is said, in his Britannic majesty's dominions in America.

§ *Oldmixon's Brit. Emp. in Amer.* vol. 1 p. 300.

|| One of these ministers was a Mr. *William Thompson*, a native of England, and originally among the numerous primitive Puritans of Lancashire. He was the first minister of Braintree in Massachusetts, and was now sent to Virginia, as his biographer expresses it,—“to carry the gospel to the ignorant.” *Allen's Biog. Dict. art. Thompson.*

¶ *Beverly's Hist. of Virg.* p. 229. *Oldmixon's Brit. Emp. in Amer.* vol. 1, p. 301.

would appear, the governor and council of Virginia issued an order, that all such persons, as would not conform to the discipline of the church of England, should depart the country by a certain day.* Although this mission “to convert the ungodly Virginians,”† or, as expressed by our own annalist, “this pious design, was unhappily frustrated,”‡ and these ministers were obliged to depart from Virginia, in pursuance of the before mentioned order; yet a congregational church, it is alleged, was now founded by them in Virginia, which, in the course of a few years, exceeded one hundred members; of which Mr. *Durand* was an elder,§ whom also we shall shortly see acting as a conspicuous character in Maryland. From this church emanated that society of fanatics, who, after being driven from Virginia, and permitted to settle themselves at Providence, now called Annapolis, in Maryland, ungratefully rewarded their benefactors, by taking the reins of government out of their hands, and dispossessing the lord proprietary of his province.

Whether the few *Protestants*, who had been, prior to this, settled at St. Mary’s with the Catholics, were those of the Church of England or Puritans, does not clearly appear. From all concomitant circumstances attending the apparently trifling occurrence, which we are now about to state, it would seem, that they were of the late established Church of England. The incident is thus mentioned on the journal of the house:—

“22d of March,—in the afternoon.—Then was a petition presented by David Wickliff in the name of the *Protestant Catholics*|| of Maryland, and respited till the next morning.

* Oldmixon’s Brit. Emp. in Amer. vol. 1, p. 300. Holmes’s Annals, vol. 1, p. 321.

† Chalmers’s Annals, p. 121.

‡ Holmes’s Annals, vol. 1, p. 321.

§ *Ibid*, p. 346.

|| This expression is so in the record.—It is difficult to ascertain precisely, what was here meant by annexing the term—“Catholics” to that of “Protestants.”—*Leland*, in his Hist. of Ireland, (vol. III. p. 123,) mentions, that “the Irish Catholics of those days affected to consider the word *Protestant*, as a designation peculiar to the members of the established Church” of England. The Catholics of Maryland might possibly here use this term in the same sense.—As to the term “Catholic,” although it appears, according to modern usage, repugnant to that of “Protestant,” yet in its original meaning, it was by no means contradictory thereto. The Greek term—*Katholikos*—signifying total or *universal*, was first applied by the primitive Greek fathers to the whole christian church, in contradistinction to the separate and distinct christian churches set up in different parts of christendom. This term continued to be applied to the church by the Latin fathers as well as the Greek, in their writings as well as

CHAPT. "23d of March. The petition of the *Protestants* was read,
 III. complaining against Mr. Thomas Gerard for taking away the
 1642. key of the chapel, and carrying away the books* out of the chapel, and such proceedings desired against him for it, as to justice appertaineth.—Mr. Gerard being charged to make answer; the house, upon hearing of the prosecutors and his defence, found that Mr. Gerard was guilty of a misdemeanor, and that he should bring the books and key taken away to the place where he had them, and relinquish all title to them or the house, and should pay for a fine 500 lb. tobacco towards the maintenance of the first minister as should arrive."

The paragraph immediately following this on the journal seems to denote, that the members considered this as a question of considerable delicacy.—"All that had proxies expressed themselves, that they voted in their own behalfs, except John Worthy who voted for all his voices."

As Mr. Gerard must have been a man of considerable note at this time in the province, and probably a zealous Roman Catholic, being the lord or owner of St. Clement's manor, which comprehended very nearly the whole of St. Clement's hundred in St. Mary's county, this exaggerated fine upon him demonstrates, that the Protestants, supposing them to be of the Church of England only, must have possessed, at this early period of the settlement of the province, a very great influence therein, as they naturally, indeed, might be supposed to have from the su-

otherwise, but with some occasional variations in its sense and meaning; such as, that the church was *Catholic*, because, it prescribed a performance of *all* the evangelical commands, to *all* persons, of *all* conditions; and also from the *universality* of *grace*, which it held out to *all* men.—(See this subject learnedly explained by bishop *Pearson* in his "Exposition of the Apostles' Creed:—a work esteemed by the English divines, as a classic in the science of divinity.) In these senses the word "Catholic" was continued to be used by the *Roman Catholic Church*; and, on the event of the reformation, became, in common usage, exclusively appropriated to them. But the Church of England, continuing the use of the *Athanasian*, as well as the *Apostles'* creeds, have put in their claim also to the same title; and accordingly apply it to their church, when in the former creed they use the terms—"Catholic faith" and "Catholic religion." So in the latter creed,—when they repeat the words,—"I believe in the Holy *Catholic Church*."—This seems to be some proof, that the words,—"*Protestant Catholics*," in the journal of the house of assembly, as above mentioned, meant exclusively the Church of England—Protestants.

* This circumstance corroborates the supposition, that the "*Protestants*," who had presented this petition, were those of the Church of England, as the Puritans were not in the habit of using "books" in their church service. The "books," here mentioned, were, most probably, those of the Church of England service, remaining as usual, on the reading-desk of the pulpit.

premacý of the mother country. But we may here take occasion to observe, from the complexion of some proceedings of the English parliament, which had taken place prior to this period, that a very considerable number, if not a majority, of the clergymen of the Church of England in the mother country, had by this time conformed to the discipline of the Puritans. In the preceding year, (in September, 1641,) a proposition had been made in the house of commons, relative to the book of common prayer, used by the established church. “In regard,” (they said,) “many things in it gave offence, at least umbrage, to tender consciences, that there might be liberty to disuse it.”* Although this proposition did not at this time succeed, on account of the opposition of the house of lords, who voted an order for the due performance of divine service without any alteration, as appointed by acts of parliament, yet (as observed by *Rapin*,†) “the commons absolutely refused to join in the publication of this order, thinking it unseasonable at such a juncture to press the rigorous observance of the laws concerning divine service, *when a great part of the people called for a reformation.*” The king also, in the December following, had thought it proper to issue his proclamation to enforce the performance of divine service according to the law and statutes of the realm; but this untimely measure was deemed offensive to the commons.‡ The right of the bishops to vote in the house of lords, also had been taken away by statute; and the commons had voted, (and their votes had become laws,) that all deans, chapters, and canons should be abolished.

In conjunction with these circumstances attending the state of the church in England, an incident is mentioned in the History of Massachusetts, which seems to indicate, that notwithstanding the ruling party in the house of commons in England had failed in their attempt at a complete abolition of the established church by a statute for that purpose, as just mentioned, yet the ministers of the Puritan sects, (comprehending the Presbyterians as well as independents,) appear to have now gained an influence throughout the kingdom superior to those professing the established church.§ An assembly of divines, it

* Lord Clarendon’s Hist. (folio edit.) p. 96.

† Rapin’s Hist. (Tindal’s edit.) vol. 9, p. 325.

‡ Rapin’s Hist. *ibid.* p. 403.

§ It is remarked in the king’s answer to the nineteen propositions of the parliament, both dated in June, 1642, that “conventicles had begun to swarm in the

CHAPT. is said, were convened this year, (1642,) at Westminster, to
 III. consider and advise about the settling of church government.*

1642. Several lords of the upper house, and about thirty members of the house of commons, with some ministers in England who were for the independency of churches, dispatched a formal written invitation to Mr. Cotton of Boston, Mr. Hooker of Hartford, and Mr. Davenport of New Haven, (all of New England,) to ask their assistance in that synod. Two of these New England ministers thought, that "it was a clear call of God;" but the other "not liking the business, and thinking it was not a sufficient call to go a thousand leagues to confer about matters of church government," it was delayed, and the invitation finally declined.† Jealousy of the Presbyterians, who composed at this time a principal part of those denominated in England, Puritans, was most probably the true cause of the final refusal of the New England ministers to join the assembly in England.

From the preceding statement, relative to religious parties, as they existed at this time both in the mother country and the colonies, we may easily perceive, that the Roman Catholics of Maryland must have had a very difficult line of conduct to pursue. They had ample cause to dread the growing power of the Puritans; but the interests, as well as personal feelings, perhaps of the lord proprietary, would seem to have dictated his adherence to the royal cause. Those, who administered the affairs of his province, not having as yet much of the puritanic leaven mixed among them, would also feel disposed to act accordingly. Yet a mistaken policy had, it seems, suggested to the English and Irish Catholics, to pay court to the Puritans, by joining in their wishes for the destruction of the established church. In avoiding Scylla they fell upon Charybdis. On the hidden and treacherous shoals of Puritanism, their fortunes were wrecked.

Besides the few acts of assembly, passed at this session, (which will be presently mentioned,) one other measure appears

kingdom within these nineteen months."—(*Rapin's Hist.* Tindal's edit. vol. 10, p. 87.)—This computation would bring the date of the first perceptible commencement of the downfall of the church to the latter end of the year 1640.

* See this assembly of divines at Westminster characterised by lord Clarendon in his *Hist.* (folio edit.) p. 174.—"Some of them infamous in their lives and conversations; and most of them of very mean parts in learning, if not of scandalous ignorance; and of no other reputation, than of malice to the Church of England."

† Hutchinson's *Hist. of Massachusetts*, vol. 1, p. 111.—Holmes's *Annals*, vol. 1, p. 321.

on the journal; which, although it be apparently of a trifling nature, yet the mention of it serves to develop the early domestic policy, as well as the state of the useful arts, at this time, in our infant colony.—“Then was read a bill to prohibit the exportation of deer skins, to the end they might be dressed in the country, but, because the leather dresser could not undertake to take all the deer skins of the country, till he had provision of tallow, &c., out of England, it was respited till next assembly.”

CHAPT.
III.
1642.

Having finished the business of the session, the house appear to have felt an anxiety to provide against any unwillingness which the governor might possibly entertain, to convene them again within any short period. They, therefore, “appointed,” that “another assembly was to begin on the first of June next.” This was entirely consonant to their former resolution, on the first day of the session,—that the adjournment or prorogation of the house should not be without their own consent. They do not appear, however, to have entirely taken away the right of the governor to *dissolve* the house; for, the last entry on the journal of this session is,—“Then the lieutenant general dissolved the house.”—But it is to be supposed, that this exercise of the power of dissolution by the governor, was also, as well as that of prorogation, not to be “without the consent of the house.”*

Three acts of assembly only were passed during this short session. The first, which was entitled, “an act for the putting in force of some laws for the government of the province,” related to some branches of the act of 1638, ch. 2, before mentioned; to wit, so much of that act as concerned the rights of the lord proprietary, and people’s liberties,—the power of judicature in civil and criminal causes,—the captain of the military band,—officers’ fees,—the settling the house of assembly,†—the payment of debts among all creditors by equal

The acts
passed at
this ses-
sion.

* For all proceedings of this session of assembly, as above mentioned, see the record book, in the council chamber, entitled, “Assembly Proceedings from 1637 to 1658,” p. 166.

† By the 14th section of the act referred to, (1638, ch. 2,)—“The lieutenant general and secretary, (or his deputy,) and gentlemen summoned by special writ, and one or two burgesses out of every hundred, (at the choice of the freemen,) at any time hereafter assembled, shall be judged a general assembly.” So that by the present recognition of this clause in the former act, it would appear, that the next assembly was not to consist, as at the present one, of a convention of *all* the freemen of the province, but according to the constitution as before settled and adopted at the two sessions preceding this last one.

CHAPT. partitions,—and the custom of tobacco. These branches, of
 III. that act of 1638, were hereby revived and continued until the
 1642. end of the next assembly.*

The next act of this session was entitled, “an act for granting one subsidy.” The motives to this act are thus set forth in the preamble.—“The freemen of this province out of their desire to return his lordship some testimony of their gratitude for his lordship’s great charge and solicitude in maintaining the government, and protecting the inhabitants in their persons, rights, and liberties, and to contribute some support towards it, so far as the young and poor estate of the colony will yet bear, do desire that it may be enacted, &c.” The subsidy granted was 15*lb.* of tobacco per poll, for every inhabitant of the province, male and female, children under the age of twelve years excepted, to be paid according to the lists or returns made by the several housekeepers, between the 25th of July and 25th of August next, under the penalty of 30*lb.* of tobacco for every taxable concealed. The expenditures of lord Baltimore, in the settlement of his province, from its first colonization to the present period, must have been very considerable, and for which he could not, in the nature of things, have as yet received from the colony any thing like a remuneration. The colonists were, therefore, most probably actuated, in granting this subsidy to the lord proprietary, by a mere honest sense of justice.†

The other act of this session, entitled, “an act against fugitives,” was only a re-enactment of an act, with the same title and the same words, passed at the last session, and herein before noticed. This mode of legislating appears to have been much in use in the early sessions of the provincial legislature. Instead of reviving or continuing a former act, it was common to re-enact the same over again with the same title and in the

* It is mentioned in this act of 1641–2, ch. 4, that “the next assembly was to begin on the 12th of November ensuing, unless some assembly should be called sooner.”—But as just stated above, it had been “appointed, that another assembly was to begin on the first of June next.”—These contradictions indicate the perturbed and unsettled state of the government of the colony at this time.

† *Chalmers*, in his annals, (ch. IX. p. 208,) makes the following remarks upon this act of assembly.—“The transportation of people and necessary stores and provisions, during the two first years, cost lord Baltimore upwards of forty thousand pounds; which, if estimated according to the then value of money, and the price of all things, must be allowed to have been a considerable sum. The freemen of the province thought so, when they granted him this subsidy. And this donation does equal honour to both, because it shews that the one had merited; that the others were grateful.”

same words; a practice, that tended unnecessarily to swell the statute book.

CHAPT.
III.

About this time must have arrived in the province the new "conditions of plantation," bearing date the tenth day of November, 1641, which his lordship had thought proper to be promulgated by him, at London, for the better encouragement of emigrants to his province. They seem to pursue his original system of colonizing the province by dividing it into manors; and it is probable, from the special direction therein, that emigrants to the province should go out furnished with "such arms and ammunition" as are therein specified, that information of the hostilities of the Indians had reached him before he issued those "conditions."*

1642.
New con-
ditions of
plantation.

Early in the spring of this year must have occurred the proceedings of some of the Maryland colonists, as recognized by the historians of New York, in taking possession of the margin of the river, then called by the English—Hiding-creek, but by the Dutch—Schuylkill. These proceedings of the Marylanders must have been founded on a supposition, that the expression in lord Baltimore's charter,—“unto that part of the *bay* of Delaware on the north, which lieth *under the fortieth degree* of north latitude from the equinoctial, where New England is terminated,” extended the north bounds of his province, so as to include the whole of the fortieth degree.† By which means all the lands on both sides of the Schuylkill, including the city of Philadelphia and the peninsula or neck of land lying between the rivers Delaware and Schuylkill and south of Philadelphia, would have been a part of the province of Maryland. But as the “bay” or *estuary* of Delaware did not extend higher up that river than New Castle, this subsequently became a doubtful question, and formed part of the grounds of dispute between the proprietaries of Maryland and Pennsylvania, which afterwards so long subsisted. Notwithstanding the lord Baltimore's grant, and notwithstanding also the Swedes had, in the year 1627, arrived in the Delaware, and carried on for some years traffic with the natives, and had, in 1631, built a fort at the mouth of Christina creek, near Wilmington, William Kieft, who appears to have been the third Dutch governor at New Amsterdam, (now New York,) and had acceded thereto in the year 1638, claimed all the country from thence “to Delaware, then called South river,

Maryland
settle-
ments on
the
Schuylkill.

* See note (LXIII.) at the end of this volume.

† See note (XLIV.) at the end of this volume.

CHAPT. and beyond it," to the exterior south cape of Delaware bay,
 III. called Cape Henlopen, at Fenwick's island, as a part of New
 1642. Netherlands. He accordingly, in a letter,†dated May 6th, 1638,
 directed to Peter Minuit, (or Minnewits,) whom the historian of
 New York supposes "to be the Swedish governor of New Swe-
 den," asserted, "that the whole South river of New Netherlands,"
 (the Delaware,) "had been in the Dutch possession many years,
 above and below, beset with forts, and sealed with their blood."
 In pursuance of this right by "possession," which the Dutch
 had thus acquired by "their blood," as they alleged, to the
 lands even on the *west* side of the Delaware, this same governor
 of New Amsterdam, (Kieft,) being informed of these proceed-
 ings of the Marylanders, in May 1642, "fitted out two sloops,"
 (an armament to go round from New York to the Schuylkill, by
 sea, as we may suppose,) "to drive the English, (Marylanders,)
 out of Schuylkill." In his instructions, dated May 22d, to
 Ian Iansen Alpendam, who commanded in that enterprise, he
 again strongly asserts the right of the Dutch both to the soil and
 trade there.* But, allowing that the English claim to all the
 country lying between the colonies of Virginia and New Eng-
 land, to have been valid; by reason of Cabot's discovery, the
 lord Baltimore and his Marylanders were obviously justifiable in
 considering even the prior possessions, (if they were really so,)
 of either the Dutch or Swedes, as entitled to no consideration,
 at least by any British subject, against the right granted to him
 by his charter of Maryland from the English crown. Whether
 Alpendam succeeded in his enterprise, or whether the Maryland-
 ers then relinquished their possessions on the Schuylkill, we are
 not informed, nor do our Maryland records make any mention of
 this attempt by the inhabitants of Maryland to form at this time
 any settlements on the Schuylkill.

Besides the intrusions of these foreigners,—the Dutch and
 Swedes, into the territories of Maryland, claims were now made
 also to lands on the west side of the Delaware by some English
 settlers at New Haven. In some proceedings of the commissioners
 for "The United Colonies of New England," convened at Bos-
 ton, the 19th of April, 1653, relative to disputes between them
 and the Dutch, they thus express the principle on which they
 laid claim to "lands on both sides Delaware bay and river."

† See note (XLV.) at the end of this volume.

“The United English colonies* expecting a just and neighbourly correspondency and intercourse from and with the Dutch living at and about the Monhatoes, which they call New Netherlands, (though the place fall within that part or tract of America called New England, lying and being in breadth *from forty to forty-eight degrees* of northerly latitude, which both in Europe and here is well known by *antient patent* to be granted by the kings of England to their subjects, to settle and plant upon,) have met with a constant course of opposition, injuries, and many hostile affronts.”†

The “antient patent,” here mentioned, could be no other than that, which was commonly called Sir Ferdinando Gorges’s grant, bearing date, November 3d, 1620. This grant was made to the duke of Lenox, and several others of the nobility, together with Sir Ferdinando Gorges; and seems to have been intended as a substitute for the old North Virginia company, who had ceased at this time to act. By this patent, “all that circuit, continent, precincts, and limits in America, lying and being in breadth from forty to forty-eight degrees of northerly latitude, and in length by all the breadth aforesaid throughout the main land from sea to sea,” &c., was given to them in absolute property.‡ But these letters patent, after receiving severe animadversions made upon them in the house of commons, on account of real or supposed restrictions contained in them on the right of free fishery in America,§ were, on the 7th of June, 1635, surrendered to the king, and became void.|| Besides, agreeably to the words of this patent, New England could have commenced only where the *fortieth* degree of latitude terminated; the words—“*from the fortieth degree*,” &c. being exclusive. The line of the fortieth degree of latitude crosses the Delaware a little above Philadelphia. A great portion of the river and the whole of the bay were, therefore, clearly out of the limits of this

* Articles of union between the four colonies of Massachusetts, Plymouth, Connecticut, and New Haven, were drawn up in the year 1638, but difficulties occurred, which retarded the execution of the design, until the year 1643, when commissioners, appointed by those colonies, completed and signed the articles of union at Boston, on the 19th of May in that year. See Holmes’s Annals, vol. 1, p. 326.

† Hazard’s Collections, vol. 2, p. 212.

‡ See these letters-patent in Hazard’s Collections, vol. 1, p. 103.

§ See these debates on this subject in the Introduction to this volume, p. 235 to 239, and p. 243 to 245.

|| See the deed of surrender in Hazard’s Collections, vol. 1, p. 393.

CHAPT. grant. It becomes difficult then to discern any plausible pre-
 III. tence, on which the settlers of New Haven could ground a right
 1642. to any lands on the Delaware by force of these letters patent, which had been thus surrendered and made void, prior to any voyage or adventure of any of their fellow-settlers, to the Delaware, and which moreover did not comprehend within its limits any of the contested settlements of the Dutch or Swedes on the Delaware, or even the Marylanders on the Schuylkill.

Aware, perhaps, of the futility of a right thus founded, the commissioners, in another part of their proceedings, seem to place the foundation of their right on another ground, not indeed much more solid than the former,—*a purchase from the natives*. As this part of their proceedings contains a short sketch of the history of their claim to the present period, it is here inserted.—
 “In the yeare 1640, the English att Newhauen sent men to view and purchase parte of Delaware bay but with expresse direction not to meddle with any thing the Dutch or Swedes had right unto. As the English vessel passed by the Monhatoes the said Monser Keift made a protest but upon enformacon of the order giuen hee was satisfyed and wrot to Iohn Jonson the Duch agent att Dellawar to hold good corespondency with the English there which accordingly hee did att first and shewed them how fare the Duch and Sweds title or claime reached; the rest hee told them was free for them to purchase and offered his assistance therin which offer (though kind accepted,) was not entertained; but the Indians being free the English agents att seuerall times from the seuerall propriators purchased large tracts of land on both sides Delaware bay and riuier and began to plant and to sett vp houses for trade within their own limits; but in anno 1642 without cause or warning giuen without shewing any title to the place or hearing what the English could say for † the said Duch gouernor sent armed vessells and men and in hostile mannor when they were altogether vnprepared for defence, as expecting nothing but peace seized their goods carried away the men prisoners and with such violent hast burnt downe their trading houses that two houres respite for treaty or consideration could not bee obtained, nor soe much time as to inventory the goods taken out of their charge; and after in another parte of the riuier they seized their boat and two other men in it carrying the men and goods first to the Monhatoes and thence return-

• This blank is so in the original.

ing the persons and parte of the goods to Newhauen; as by letters and other euidence may appear. Mr. Lamberton agent for the English att Newhauen coming from Delaware anno 1642 by the Monhatoes, the Duch gouvernor aforesaid compelled him by threatenings and force to giue an account of what beauer hee had traded within the English limits att Delaware, and to pay recognition or costum for the same and a protest sent from Newhauen against those injurius proceedings proued altogether fruitless. The Duch gouvernor aforesaid sent armed vessels to Delaware to seize Mr. Lamberton's vessell by force or to driue him out of the riuier but hee perceiuing theire aime stood upon his guard and at that time maintained the right and honnor of the English."*

As ten years had now elapsed since the lord Baltimore had obtained his grant, and his colony had been settled at St. Mary's for several years in pursuance thereof, we cannot but deem it extraordinary, that, amidst these disputes between the Dutch and the New Haven colony, no notice appears to have been taken of his lordship's claim. That the Dutch should pay but little attention to it, may indeed be easily accounted for. They naturally deemed their claim, founded as they alleged on the right derived from *prior occupancy*, paramount to any grant from the British crown. It must be allowed, indeed, as has been before observed in the introduction to this history,† that the right of *prior discovery*, (under which by Cabot's voyage the English claimed all the continent from the coast of Labrador to the cape of Florida,) is generally but a slender right, unless quickly followed by an *occupancy* coextensive with the claim. The *limits* also of the territory thus supposed to be acquired by occupancy have always been fruitful of uncertainty and dispute. Hence the Dutch had some plausible pretext for building a claim to their settlement at Manhatoes and the territories which they denominated New Netherlands, as far as the east side of the Delaware, as they consisted of the unoccupied space of the continent between the colonies of Virginia and New England. But, however just these pretensions of the Dutch might have been, certainly no English subject could with propriety presume to claim lands, under a purchase from the natives, which his sovereign, (in whom alone the right of grant vested,) had before granted to another subject.

* See the proceedings of the New England commissioners, in Hazard's Collections, vol. ii. p. 212-13-14.

† See note (C.) at the end of the former volume.

CHAPT. The New Haven colonists were, therefore, violating a well es-
 III. tablished principle, acknowledged throughout the colonization of
 1642. British America, and adopted or retained to this day by the United States. But lord Baltimore and his colonists were papists, unentitled, in the eyes of these Puritans, to any rights. Their claims were therefore disregarded by them. These considerations, together with the distance between St. Mary's, the place of the first settlement of the Maryland colony, and the remote limits of the province on the shores of the Delaware, sufficiently account for the intrusions of the New Haven colonists, and the passive conduct of the Marylanders in permitting those of the Dutch and Swedes, on that part of their territories.

Attempt
in England
to revive
the old
charters of
Virginia.

It would be improper to pass over in this place unnoticed some proceedings of the assembly of Virginia, held in this year, which, at least in the tendency of their consequences, had material relation to the colony of Maryland. Shortly after the commencement of the session of parliament called and held in the year 1640,* commonly called the long parliament, which soon manifested the ascendancy they had now gained and exercised over the power and prerogative of the crown, this acquired influence of the popular branch of the English constitution suggested to some of the old proprietors of Virginia under their abolished charter, that a favorable occasion now presented itself for the revisal of the judgment of *quo warranto* in the year 1624, whereby these charters had been annulled. If an act of parliament could be procured, which should vacate or set aside that judgment of the court of king's bench, all the rights of the members of the old corporation under those charters would revive, and the colony of Virginia become again proprietary, and subject to the government of the corporation in England. All subsequent grants of lands within the territories of that ancient dominion, and particularly the charter of Maryland to lord Baltimore, would then become void, and, what perhaps was of more importance in the view of the first instigators of this transaction, the well known loyalty and adherence of the lordly possessors of Virginia to the royal cause might be suppressed, and the "growth of popery"—that noxious weed, be cut and rooted up out of Maryland. These previous facts are, however, best stated in the words of "the declaration" of the assembly of Virginia.

"To all christian people to whom these presents shall come

* Chalmers's Annals, p. 215.

to be read, heard, or understood, we, the governor, council and burgesses of the grand assembly in Virginia, send greeting in our Lord God everlasting:—Whereas George Sandys, esqr. being appointed agent for the colony by the assembly 1636,* hath exhibited a petition in the name of the adventurers and planters in Virginia, to the honourable house of commons in parliament in England, for restoring the letters patent of incorporation to the late treasurer and company, mistaking his advice and instructions from the said assembly for his so doing, it being neither the meaning nor intent of the said assembly or inhabitants here, for to give way for the introducing of the said company or any other.

CHAPT.
III.
1642.

“To which intent and purpose, this grand assembly having fully debated and maturely considered the reasons on both sides, as well arguing for as against a company, and looking back to the times under the company, as also upon the present state of the colony, under his majesty’s government, they find the late company in their government intolerable, the present comparatively happy, and that the old corporation cannot with any possibility be again introduced, without absolute ruin and dissolution of the colony, for these reasons following, viz:”—A variety of reasons are then forcibly urged at considerable length, the principal of which appears to be—an apprehension, that the corporation would again assume to themselves a monopoly of their trade, and also usurp a right of legislation over them, when they had a legislature of their own, granted to them by the indulgence of his majesty; and moreover, that the planters now enjoying their lands under grants of his majesty, “the wiser world” (they said,) “we hope will excuse us, if we be weary to depart with what (next our lives,) nearest concern us, which are our estates, being the livelihood of ourselves, wives, and children, to the courtesy and will of such task-masters, from whom we have already experienced so much oppression.” The declaration concluded in the form of an act, in which is prescribed a severe penalty, (to wit, the forfeiture of their estates in the colony,) on “any planter or adventurer, who should go about by any way or means either directly or indirectly, to sue for, advise, assist, abet, countenance or contrive the reduction of this colony, to a com-

* “George Sandys, gentleman,” is in the list of the members of the corporation, whose names are inserted in “the second charter of Virginia” of 1609.—The gentleman above mentioned being, probably, the same person, his interest therein might have influenced his conduct.

CHAPT. pany or corporation, or introducing a contract or monopoly upon
 III. our persons, lands or commodities.”*

1642.

This declaration, accompanied with a petition for the royal confirmation of it, was transmitted to his majesty, who, having now come to a final rupture with his parliament, had on the fifteenth of March preceding fixed his residence at the city of York. Well pleased with the loyalty of his faithful colony, his majesty quickly returned an answer, of which the following is the most material part.

“These are to signify, that your acknowledgment of our grace, bounty, and favour towards you, and your so earnest desire to continue under our immediate protection, is very agreeable unto us ; and that as we had not before the least intention to consent to the introduction of any company over that our colony, so we are by it much confirmed in our resolutions, as thinking it unfit to change a form of government wherein (besides many other reasons given, and to be given,) our subjects there having had so long experience of it, receive so much contentment and satisfaction. And this our approbation of your declaration and protestation, we have thought fit to transmit to you under our royal signet. Given at our court at York, the 5th of July, 1642.”†—Thus a blow, which would have been more effectually destructive of the rights of lord Baltimore and his colonists than even those of the planters of Virginia, was happily warded off by the spirit and resentment of the latter. That these endeavours to re-establish the old corporation of Virginia were undertaken partly with a view to the abolition of the Maryland charter, receives considerable confirmation from “an elaborate memorial, which” (it is said,) “was written in those days, entitled, a declaration shewing the illegality and unlawfulness of the patent of Maryland.”‡

War with
the Indi-
ans.

The Indians of Maryland still continuing their hostilities, probably with increased violence, it was deemed necessary to introduce a more strict military discipline among the colonists, than they had heretofore practised. The following “orders” were

* This declaration is dated “the first of April, in the year of our Lord 1642, and in the eighteenth year of the reign of our sovereign lord king Charles over England,” &c.—See it at large in *Burk’s Hist. of Virg.* vol. ii. p. 68.

† See *Burk’s Hist. of Virg. Ibid* ; and *Chalmers’s Annals*, p. 121, and 133 ; who cites *Virg. Entr.* vol. 1, p. 237.

‡ *Chalmers’s Annals*, pp. 215, 236 ; for which he cites *Virg. Papers*, 75 B. p. 135.

therefore "proclaimed on the 23d of June, 1642, upon pain of death or other penalties as by severity of martial law may be inflicted. CHAPT. III. 1642.

"That no inhabitant or housekeeper entertain any Indian upon any colour of license, nor do permit to any Indian any gun, powder and shot.

"That all housekeepers provide fixed guns and sufficient powder and shot for each person able to bear arms.

"No man to discharge three guns within the space of one quarter of an hour, nor concur to the discharging so many, except to give or answer alarm.

"Upon the hearing of an alarm every housekeeper to answer it, and continue it so far as he may.

"No man able to bear arms to go to church or chapel or any considerable distance from home without fixed gun, and a charge at least of powder and shot.

"Of these every one required to take notice upon pain of contempt; for better execution the serjeant to inform the lieutenant general or captain."

With these "orders," and on the same day, commissions of captaincies were issued to two several gentlemen:—to William Blount, esq., to be a "captain of the soldiers of St. Mary's county;" and to Robert Evelyn, gent., "to take the charge and command of all or any the English in or near about *Piscattaway*, and to levy, train, and muster them," &c. In a week or two afterwards also, (July 11th,) written orders or commission issued to Mr. Rigby,—“to repair to the great men of Patuxent and of the nations adjoined to them, and of them to demand in my name,” (the lieutenant general,) “to deliver without delay unto Simon Demibiel or Henry Bishop, or any other the bearer or bearers hereof, the persons of such Indians of any of those nations, as shall be named to you by the said Simon or Henry to have done unto them and other English, injury in their swine and otherwise, to the end the said Simon or Henry may bring the said Indians before me to answer such complaints as shall be objected against them by the said Simon or Henry or any others, and certify me what you have done herein, as soon as you may, and this shall be your warrant.”*

From these proceedings at this time relative to the Indians,

* For these military orders and commissions, see "Council Proceedings from 1636 to 1657," pp. 59, 61.

CHAPT. we seem authorised to suppose, that our colonists had now ex-
 III. tended a scattered population as high up the Patowmack as Pis-
 1642. cattaway creek, so as to include in peaceable possession that
 portion of the peninsula lying between the rivers Patowmack and
 Patuxent, which now constitutes the counties of St. Mary's and
 Charles ; although some tribes of Indians might perhaps have
 still remained precisely within these limits, over whom the Ma-
 ryland government might have exercised some civil jurisdiction.
 It will be recollected, that on their first settlement at what was
 called the city of St. Mary's, the Yoamacoës, for reasons before
 mentioned, particularly on account of the hostilities practised
 towards them by the Susquehanocks, were about receding far-
 ther into the country ; and the particular scites of towns of the
 next adjacent tribes were at Piscattaway, where Mr. Fleete had
 resided with them some time, and at another place somewhere
 on the right or south bank of the Patuxent, whose king visited
 the colonists on their first landing in a friendly manner, as be-
 fore related. Our records do not make mention, during these
 times, of any other nation or tribe, inhabiting what is commonly
 called the western shore of Maryland, with whom our colonists
 were engaged in any warfare, than the Susquehanocks and the
 Wycomeses.* The plundering of live stock by the Indians of
 Patuxent does not seem necessarily to imply, that they were in a
 state of war with the colonists. Savages, in all cases, pay but
 a feeble respect to the rights of property.

Another
 session of
 assembly
 this year.

Although at the conclusion of the last session of assembly,
 which ended on the 23d of March last, the house "appointed,"
 that "another assembly was to begin on the first of June next,"
 yet no further notice thereof appears on our records until the
 first of July following, when a proclamation appears to have been

* The Susquehanocks, Wycomeses, and Nanticokes were, by the governor's proclamation of the 13th of September of this year, declared to be "enemies of this province," as will be seen in a few pages further on. The sites of the Nanticokes and the Susquehanocks are well known at this day to have been on the rivers of their respective names ; but insuperable difficulty occurs in ascertaining the true location of the *Wycomeses*. In a pamphlet published in 1643, entitled, "a description of the province of New Albion, in North America," as stated in the notes of *Smith's Hist. of New Jersey*, (p. 31,) the "*Wycomeses*," together with "the *Ihon-a-Does*" (meaning most probably the *Oneydas*, one of the Iroquois tribes,) were the "forced auxiliaries" of the Susquehanocks. But whether these Wycomeses inhabited any part of the western shore of Maryland, or on the western side of the Susquehanah in Pennsylvania, we have no authority to determine.—See *Proud's Hist. of Pennsylv.* vol. 1, p. 114, and *Holmes's Annals*, vol. 1, p. 347.

issued by the lieutenant general “appointing a general assembly to be held on Monday the 18th of July, 1642, and requiring the freemen of every hundred to elect burgesses for that purpose;” and also “personal writs” of the same date were issued to divers gentlemen therein named to attend the assembly.

CHAPT.
III.
1642.

It will be recollected, that by the first act passed at the last session, to wit, that entitled, “an act for the putting in force of some laws for the government of the province,” certain branches of the act of 1638, ch. 2, before mentioned, were revised and continued until the end of the next assembly, particularly that part of it which related to “the settling the house of assembly;” whereby “The lieutenant general and secretary, (or his deputy,) and gentlemen summoned by special writ, and one or two burgesses out of every hundred, (at the choice of the freemen,) at any time hereafter assembled, should be judged a general assembly.” This first act of the last session, therefore, restored the representative principle of the provincial constitution, and abolished the democratic principle, (or that of a pure democracy,) as exercised at the last session, wherein every freeman in the province had claimed, or was entitled to a seat in the legislature, either by his individual presence or by that of his proxy.*

Accordingly, the first business, which appears to have occupied the attention of the house, on the first day of the session, (18th of July,) had relation to this subject.—“Richard Thompson and Robert Vaughan exhibited themselves proxies for the several freemen of Kent,† who elected them as such, and shewed their names; but they were refused to be admitted as such, in regard the act had appointed *burgesses*, and the writ had commanded the election of *burgesses*. Then they pleaded, that the freemen had likewise elected them *burgesses*, and desired as such to be admitted. Whereupon Mr. Giles Brent’s‡ letter was looked into, and there found a certificate of their election as *burgesses*; whereupon they were admitted as such.”—From this it appears, that in the opinion of this assembly, there was an essential difference between the words *proxies* and *burgesses*;

Proceed-
ings there-
in.

{ * See the proclamation for calling that assembly, before p. 190.

† The isle of Kent.

‡ Mr. Giles Brent must have been, from this, a resident in the isle of Kent, at this time, and in some official capacity there. He had been *commander* of the isle of Kent, (see before, p. 166;) but in this office, it seems, he was shortly afterwards succeeded by Mr. Brainthwayte, (see before, p. 170.) He must, however, have given the above mentioned certificate, by virtue of some public powers then vested in him.

CHAPT. the former being a representative of an individual; the latter, of
 III. the people in an aggregate capacity.

1642.

In the afternoon of this first day of this session, a more important motion was made in the house. One, which laid a foundation for the adoption in Maryland of that great constitutional principle of "checks and balances," which, next to that of representation, is said to form peculiar features of excellence in the English and American constitutions. "Robert Vaughan" (one of the before mentioned burgesses of Kent,) "in the name of the rest,"* desired that the house might be separated, and the burgesses to be by themselves, and to have a negative; but it was not granted by the lieutenant general; "that is, it was not agreed to by the lieutenant general, without whose assent, he being the lord proprietary's lieutenant or deputy, so important a change in the form of the provincial government could not with propriety take place.

This conduct of the governor must be viewed, at least at this day, as one of those instances, wherein the rulers of a government are often too tenacious of their power; an impolicy, which often thwarts its own purposes. To yield it up with grace and at least apparent willingness, on such occasions, especially when good principles of government and the happiness of the people require it, would often be the surest means of preserving the remnant of power, which it would be their duty to retain. When we attend to the state of this house of assembly, we easily see through the policy, which actuated the governor at this time. From the journal there appears to have been nine gentlemen in the house, (besides the lieutenant general and the secretary, the former of whom acted as president,) who were "called by special writs" to attend, and who with the president and secretary made up eleven in number; and nine gentlemen, whose names appear as burgesses elected for the several hundreds, to wit, two for each hundred, inclusive of the isle of Kent as one hundred, except for St. Clement's hundred, for which only one appeared, and one was elected for Mattapanient hundred, who did not appear at the first of the session. The governor was, therefore, sure of a majority, even after the number for Mattapanient hundred appeared, by means of his own casting vote. It is to this cause only, that we can attribute the refusal of the governor to

* That is, "the rest" of the *burgesses of the house*, in contradistinction from those summoned by *special writ*.

assent to this salutary alteration of the provincial form of government as it then existed. CHAPT.
III.

1642.

Another incident occurred in this afternoon's session, which, having relation to the lieutenant general's powers in the government, also requires to be noticed.—“Upon motion made of a march against the” [Indians*] “they” to wit, (the burgesses,) “expressing a great opposition, the lieutenant general told the burgesses, he did not intend to advise with them, whether there should be a march or not, for, that judgment belonged solely to himself, as appeared by the clause of the patent touching the power of war and peace;† but to see what assistance they would contribute to it, in case he should think fit to go; and a motion was made by the secretary, that a bill might be drawn up for the levying of 20 lb. tobacco per head toward the charge of it, whereto the burgesses desired to have the patent to peruse, and respite till the next morning to advise of their answer.”—What was the cause of the “great opposition expressed by the burgesses” to this “march against the Indians” is not explained; and, as a war now subsisted against them, it is difficult to form any conjecture concerning it. The clause in the charter, together with the analogy between the constitutional laws of England and those of the province, seem to justify the governor in his claim to the power of *arraying* and mustering the inhabitants of the province and to wage war. It is not impossible, however, but that the dispute between the king and parliament in England before alluded to‡ about the right of commanding the *militia* and commissioning the officers thereof, had dictated a disposition in our colonists to deny the like right to the governor of Maryland.—It must be acknowledged, that if this prerogative of mustering and *arraying* the militia did not appertain of right to the king, he could not by his grant have conveyed it to the lord proprietary. King Charles the first had, at the commencement of the civil war, while he was at York, (in June, 1642,) issued out a *commission of array* “for the better ordering and governing of the militia,” and at the same time

* There is a blank here in the record; but from the whole of the paragraph it evidently appears, that either the word *Indians*, or some particular *denomination* of Indians, was in the *original* record book, of which that now remaining in the council chamber, from which the above extracts were taken, was only a transcript.

† See the *twelfth* section of the charter, in the former part of this volume.

‡ See p. 197.

CHAPT. issued orders to the several counties, "expressly forbidding any
 III. obedience to be given to the *ordinance* for the militia passed by
 1642. both houses." This *commission of array* was not thought legal, even by some of the friends of the king, who still retained their seats in the house of commons, particularly by the learned Mr. Selden.* And Mr. Justice Blackstone seems to acknowledge, that the king's power over the militia was *then* "unsupported by any statute and founded only upon immemorial usage."† He further observes,—“This question, long agitated with great heat and resentment on both sides, became at length the immediate cause of the fatal rupture between the king and his parliament: the two houses not only denying this prerogative of the crown, the legality of which right perhaps might be somewhat doubtful, but also seizing into their own hands the entire power of the militia, the illegality of which step could never be any doubt at all.”—We are authorized from this, it seems, to conclude, that although the lieutenant general might have had no power to order out the militia of the province, the house of assembly had none. A law for the purpose ought then to have been the issue of the dispute.

The bill proposed by the secretary, “for levying 20 lb. of tobacco per head,” did not pass at this session, and no further notice of it appears in the journal.—An act, entitled, “an act for the support of the government,” was passed, whereby “five per cent. on all tobaccos exported, except to England, Ireland or Virginia, as the last port,” was granted. This, however, appears to be only a re-enactment of the thirty-sixth bill of the session of 1638–9, together with the thirteenth clause in the act of 1638, ch. 2, all to the same purpose and in the same words; which bill and clause were among those revived and continued at the last session by the act of 1641, ch. 4, entitled, “an act for putting in force of some laws for the government of the province.” So that the re-enacting this act, “for the support of the government,” now at this session, was only an exercise of the mode of legislating commonly practised at the earlier sessions of our provincial legislature, as before mentioned, instead of reviving or continuing a former act; and formed no new provision for the support of the government. It seems difficult, however, to suppose, that the *exports* of tobacco from Maryland to other

* Lord Clarendon's Hist. (folio edit.) p. 218.—See also Rapin's Hist. of Eng. (Tindal's edit.) vol. 10, p. 315.

† 1 Bl. Com. 411.

countries than "to England, Ireland, or Virginia," could amount to such a quantity, as to be an object of legislative consideration; but such it must have been, else these successive acts of the legislature to the same purpose, would not have been passed.

CHAPT.
III.
1642.

On the next day of the session, (July 19th,) a very important proceeding of the house, relative to the constitution or form of government of the province, took place; and appears to have been intended as a permanent confirmation of the representative principle of the government, as now adopted at this session, instead of the more democratic form, as practised at the last session, when every freeman of the province claimed a seat in the legislature. It appeared first in the form of an "order of the house," among other rules and orders for the better regulation of their session, which, on account of the importance of the first, and gratification of curiosity in the others; are here inserted at large.

"1. Any ten members of the house, at any time assembled, at the usual or appointed time, (whereof the lieutenant general and six burgesses to be seven,) shall be a house, unless sickness do hinder that number: in which case only the members present to make the house.

"2. Any one of the house not appearing upon call after the third beating of the drum, shall forfeit 100 lb. tobacco, unless he have leave of the lieutenant general for absence.

"3. The drum to beat as near as may be to sun-rising, and half an hour's distance between such beating.

"4. No bill to be read above once in one day.

"5. None to speak in one day above once to one bill without leave of the lieutenant general, upon pain of 20 lb. tobacco. If two or more rise together, the lieutenant general shall determine, who shall speak first.

"6. None to use any indecent, taunting, or reviling words, to the naming or personating of any member in the house, or any other way misbehave himself in his speech upon pain of such censure as the house shall think fit."

Immediately succeeding these orders, there appears on the journal, the following paragraph.—"Upon the motion of the secretary, intimating the necessity to pass the first of these orders by way of bill, in regard of an act in force, the first order was read by itself as a bill and passed by all the freemen. Then the lieutenant general enacted it, in his lordship's name, for a law."

CHAPT. On the following day, to wit, the 20th of July, it was again
 III.
 1642. read, and two clauses were added; first, the repeal of all former acts touching the house of assembly; and, secondly, the limiting of this act to endure till the end of the next assembly: which being accepted, it was accordingly that same day published under the great seal.

A chasm afterwards appears in the proceedings of the house, probably on account of an adjournment, until the 30th of July, when a petition of Henry Bishop was read,—“touching a remedy against the Indians of Patuxent, for killing his swine; and answered, that he is required to prove his petition, and then he shall have remedy.”—From this it would seem, that the mission, before mentioned,* of Mr. Rigby “to the great men of Patuxent, and of the nations adjoined to them,” failed in its intended effect; and that satisfactory proof of the alleged injury was necessary in such cases, before the government would undertake to indemnify the sufferer.

On the first of August, which appears to have been the last day of the session, some proceedings, worthy of notice, arose on passing the act entitled, “an act determining what shall be adjudged a lawful tender.”—From the tenor of this act it would appear, that it was not made to make tobacco a legal tender; for, that, we may presume, had been done by some former law, possibly by that passed at the session of 1637–8, entitled, “a bill for ordering the payment of tobacco;” but it seems to have been intended to direct the *mode* of tendering tobacco.† This act passed by a majority of only one or two, for, *eight* members were in the negative, and the house consisted of only eighteen or nineteen members. This close voting gave rise to a constitutional question in the house, stated as follows:—

“Then Mr. Greene excepted against the voting of this bill; that it was not by the major part of burgesses, as it ought to be. Whereupon the act, made in the beginning of this assembly, was read, and it was found, that the company present was a house, and in this house every one present, whether by personal writ or as a burgess, had a voice, and that the major part of such voices present and such as they were to be proxies for, was to be judged to be the vote of the house.”

This entry on the journal is rather obscure, and not sufficiently explanatory of the *grounds* of Mr. Greene’s objection. We may,

* See before, p. 213.

† See this ancient tender law, in note (XLVI.) at the end of this volume.

however, infer, that, as the act above referred to, "made in the beginning of this assembly," required *six burgesses* to be present, to constitute a house, it is possible, that Mr. Greene might have supposed, that the assent of *six burgesses* was necessary for the passage of a law, as well as to constitute a house. But it would seem, that the act was sufficiently satisfied, if there were *six burgesses* present, although some of them should vote in the affirmative and some in the negative. It is difficult, however, to reconcile the privilege above mentioned, of appointing proxies in the house, with the representative principle of the legislature, as now settled, unless the privilege of appointing proxies, as above, be supposed to refer only to those gentlemen, who were summoned by "personal writs," and who sat in the house in their own right, and could therefore legally constitute a proxy.*

CHAPT.
III.
1642.

Several other important acts were passed at this session. In the act entitled, "An act for judges," is the following clause:—"In cases not limited in the rule or sentence by any certain law of the province, judgment shall be by the lieutenant general and council of the province then present in court, or the major part, (if it be in the *provincial* court,)—or by the lieutenant general or commander, or commissioners of the county then present, (if it be in the *county* court,)—and if the votes be equal, *that* sentence shall be entered, which is given by the chief judge."

The purport of this act appears to have been to vest a discretionary power in the judges of the two courts therein mentioned, in cases where the judgment of the court was not particularly prescribed by some act of assembly; but it more particularly deserves notice on account of its being the first legal recognition, now appearing on the records, of the supreme court of the province under the denomination of the "provincial court;" which, indeed had existed ever since the first settlement of the province, or at least since the year 1637, under the "ordinance" or commission of the 15th of April of that year.†

The next act of this session, immediately following the last mentioned, was that entitled, "An act for the rule of judicature;" intended, as it appears, to chalk out, as it were, the outlines of a system of jurisprudence, for the better guidance of the judges of the courts of the province. By this act, "first, right and just, in all civil causes, were to be determined according to the law, or

* For the proceeding of this session, see the record book, in the council chamber, entitled, "Assembly Proceedings from 1637 to 1658," p. 186—189.

† See before p. 41 42, and 86.

CHAPT. most general usage of the province since its plantation, or former precedents of the same or the like nature. Secondly—In
 III.
 1642. defect of such law, usage, or precedent, then according to equity and good conscience; not neglecting, (so far as the judges shall be informed thereof, and shall find no inconvenience in the application to this province,) the rules by which right and just useth and ought to be determined in *England*, in the same or the like cases. Thirdly—All crimes and offences to be judged according to the law of the province; or, in defect of certain law, according to the judge's best discretion, judging as near as conveniently may be to the laudable law or usage of England in the same or the like offences. Fourthly—But no person to be adjudged of life, member, or freehold, without law certain of the province.”*

These acts of assembly indicate the sense of the colonists at this time relative to the extent of the laws of England within the province; that for all the purposes of domestic policy or internal provincial government, the special laws of the province, denominated acts of assembly, should be paramount to all other laws; but in defect of these, the laws of England, to wit, the common law and such English statutes, as should not “be found inconvenient in the application to this province, should form the rules of right and just.”

The next act of this session, entitled, “An act providing for officers,” demands some animadversion; inasmuch as it exhibits the early usages of the province as to the exercise of that branch of the lord proprietary's prerogative, which relates to the appointment of civil officers. It is as follows:

“The lord proprietary, or his lieutenant general (in his lordship's absence,) may appoint any person to be conservator of the peace, or commander, or commissioner of any county,† wherein he is ordinarily resident, during his abode in that county, or to execute or return any commission to him directed for examining or certifying any matters, and may appoint any person that hath been freed by service to execute any other office or command,‡

* See this summary of the act in Bacon's Laws, 1642, ch. 4.

† “Commissioner of a county” was a term used at this time, and long after, as synonymous to a justice of the peace, who was also one of the justices of the county court.

‡ From this it would appear, that some doubt had been entertained, whether white servants imported into the colony at the expense of others, on condition of service for so many years as agreed upon, were, when “freed from service,” eligible to or lawfully capable of being commissioned to the execution of any office.

so there be reasonable fee allowed for it to be determined by the judge; and yearly, at or afore the end of the county court in March, the council or major part of them then present in court, if it be in the provincial court,* or otherwise the commissioners of the county, if it be in the county court, or the major part of them present in court, shall nominate and recommend to the chief judge, then sitting in commission, such persons as they shall think fitted for to execute the office of *sheriff*, out of which persons the chief judge shall or may appoint one to be sheriff of the county for the year next following, or otherwise may appoint any other not being of the council, and may demand and take such recognizance or security for the well discharge of his office, as he shall think fit, and any person refusing to obey any the lawful appointment aforesaid may be fined and imprisoned till he submit. This act to endure till the end of the next session.”†

CHAPT.
III.
1642.

The mode of appointing sheriffs, here prescribed, was evidently intended to be as nearly conformable to the law and usage in England in that respect as might be. The law and usage in England, relative to the appointment of sheriffs, was at the time of passing this act, (1642,) and still continues the same to this day,—that all the judges, together with the other great officers, meet in the exchequer chamber, (Westminster hall,) on the morrow of All-Souls yearly, and then and there propose three persons to the king, who afterwards appoints one of them to be sheriff.‡ It is true, that by this act of assembly, the appointment of the sheriff is directed to be by the “chief judge;” but, as the lieutenant general or governor was certainly at this time chief judge of the *provincial* court, we may infer, from this act of assembly, that he acted also as chief judge of the *county* court. By which means the prerogative of the lord proprietary, (in whom, by the seventh section of his charter, the appointment of all officers of justice seems to have been vested,) would be

* This affords further proof of what has been before mentioned, that the governor and his council sitting in their judicial capacities, constituted at this time what was then denominated, and ever afterwards retained the name of the “provincial court;” which seems to have been, as before observed, under the “ordinance” or commission of the 15th of April, 1637.

† The above act is recorded in the book in the council chamber, entitled, “Assembly Proceedings from 1637 to 1658,” p. 218, and also among the old acts of assembly in the court of Appeals office, in “Lib. C & WH,” p. 81.

‡ 1 Bl. Com. 340; and the instance in the 16 Car. I. November 6th, 1640, stated in Cro. Car. 595.

CHAPT. saved to him, being in part at least, in this instance exercised by
 III. his deputy, the lieutenant general. It is probable, that prior to
 1642. this act both the nomination and appointment of sheriffs, as well as
 all other civil officers, had been usually exercised by the lieutenant
 general; for, former commissions to sheriffs had issued, as before
 stated, without any mention made of any previous nomination
 by the judges of the courts. This indeed seems to have been
 warranted by what is stated to have been the opinion of the
 judges in the fifth year of queen Elizabeth, when, by reason of
 the plague, the judges could not meet at Westminster to nomi-
 nate the sheriffs, and it was held, that the queen by her prero-
 gative might *make* a sheriff without the election of the judges,
 notwithstanding any statute to the contrary.* But this, as Mr.
 Justice *Blackstone* observes, was "a very particular case,"† and
 was, without doubt, dictated by the peculiar circumstances at-
 tending it. Thus, the novel and peculiar situation of the colo-
 ny, on its first settlement, together with the express authority
 vested in the lord proprietary by his charter, as before mention-
 ed, and doubts probably existing as to the extension of the En-
 glish statutes on this subject to the province, might have hereto-
 fore induced the lieutenant general to the exercise of this prero-
 gative without the interposition of his judges; which power, we
 must suppose, to have been again exercised by him on the ex-
 piration of this act. It being a temporary law, "to endure only
 till the end of the next session," it must then have expired,
 (not being then continued,) and the former practice of the lieuten-
 ant general revived.

Reflections might here be indulged on the still more popular
 mode of electing sheriffs adopted by the state, when it assumed
 its independence. The experiment of vesting the choice of this
 subordinate ministerial officer in the people at large, had been
 made in the earliest stage of the English constitution. Even
 prior to the statute of 28 *Edw.* 1, ch. 8, (by which "the king
 granted unto his people, that they should have election of their
 sheriff in every shire,") such officers, according to lord Coke,
 "were of ancient time by force of the king's writ in every sever-
 al county chosen in full or open county by the freeholders of
 that county."‡ But, as stated in the preamble of the statute of 9
Edw. ii. st. 2, (by which that mode of election was altered,)

* *Dyer*, 225.† 1 *Bl. Com.* 342.‡ 2 *Inst.* 558.

“from the grievous complaint of the people of great oppressions and disheritances to them by reason of insufficient sheriffs,” the nomination of them was, by that statute, vested in the judges, as before described. It cannot possibly be denied by any one tolerably acquainted with the present mode of the administration of justice in Maryland, that the like injuries (or “disheritances,”) accrue to the people of this state from “insufficient sheriffs.” That legislators should be freely elected by the people, is a principle which should be carefully cherished; but that such subordinate officers, whose intercourse with the people tempts them to use undue means of election, particularly in the promised relaxation of the duties of the office, should be chosen by popular suffrage, experience both in England and Maryland has clearly demonstrated to be incompatible with a just execution of the laws.

CHAPT.
III.
1642.

Several other acts passed at this session, which seem to display a manifest solicitude in the legislature to provide, as well as the situation of the province would then admit, for the due administration of justice. Separate and distinct acts were made on the following subjects :—“touching appeals ;—appointing the order, wherein causes shall be heard and determined ;—appointing court days ;—providing remedy for plaintiffs in certain cases ;—for the forms of proceedings in causes ;*—ordering some things touching the trial and judging of causes ;†—touching verdicts and judgments ;‡—providing some rule for executions ;—touching execution upon corn and tobacco ;—and an act touching causes testamentary ;§—Regulations were also made on the im-

* As discussion frequently arises in our courts of justice, relative to an adherence to English precedents and “forms of proceedings in causes,” this act is inserted here in note (XLVII.) at the end of this volume, in illustration of such discussions.

† This act seems to afford additional evidence of the desire of our provincial Roman Catholics to adopt the forms and usages of the Roman civil law. See the act in note (XLVIII.) at the end of this volume.

‡ The extraordinary power given by a clause in this act to a judge over a jury makes it worth the attention of the reader.—See this clause in note (XLIX.) at the end of this volume.

§ This act seems to have been supplementary to the former act of 1641, ch. 8, with nearly the same title, as before stated in p. 188 ; except in the following clause :—“All causes of *complaint against the judge* in testamentary causes, and all probats, accounts, or other matters testamentary, wherein he is *interested as a party*, shall be heard and determined by the judge of the *provincial court*, according to the law or usage of the province, or former precedents of the same or the like nature, (to be determined by the judge,) and in defect of such then according to his sound discretion.”—“Lib. C. & WH.” p. 91.

CHAPT. portant subjects of "succession to goods of intestate persons"
 III. and "succession to land."*

1642.

Something like a new criminal code was also instituted. By an act, entitled, "an act ordaining punishment for certain greater capital offences,"—"These shall be adjudged capital offences within this province; that is to say, all offences done within this province, which are declared *treason* by statute of 25 *Edw.* iii. ch. 2. And all offences of wilful *murther* to be determined by the judge as near as may be to the law of England. And all offences of conspiring the death or destruction, or of attempting any violence against the person of the lord proprietarie of this province, or (in his absence) of his lieutenant generall, or of holding any private intelligence with a declared enemy of the province, or of rising in armes or of meeting against the lord proprietarie or (in his absence) against his lieutenant generall; and the offender (whether principal or accessory) in any of these shall suffer paines of death, and shall forfeit all his or her lands, goods and chattels to the lord proprietarie, and the wife shall lose her dower, and the offender's blood shall be corrupted."

By another act, entitled, "an act ordaining punishment for certain lesse capital offences,"—"These following shall be judged likewise capital offences within this province; that is to say, all offences of homicide, piracy, robbery, burglary, sacrilege, sodomy, sorcery, rape, polygamy, and larceny, to be determined by the judge as near as may be to the laws of England; likewise all offences of wilful burning or destroying a house, or stack of tobacco, corne, or hay, of another man's, or of cutting or plucking out another's eyes or tongue; and the offender, (whether principal or accessory afore that offence committed,) in any of these shall or may be judged to suffer paines of death, or of burning in the hand, or losse of member, or to lose all his or her lands for life, goods or chattels, dignity of office, or may be outlawed, exiled, imprisoned during life, or adjudged to serve the lord proprietary and his assigns for the term of 7 or lesse years, (except he be a gentleman,†) or may be otherwise corporally

* This act, entitled, "an act touching succession to land," seems to have been intended as a supplement to the bill of 1638-9, No. 16, entitled, "an act for the descending of land," with some few alterations; (see before, p. 157-8.) As this subject may be of some use in tracing some ancient titles to lands within this province, the reader will find it in note (L.) at the end of this volume.

† The lord proprietary had landed estates in the province, cultivated as other estates of the planters were, at his lordship's own expense. Persons thus condemned to serve him might possibly be employed as labourers on one of his

corrected or put to shame, as the court shall think the crime to deserve. This act to endure till the end of the next assembly." CHAPT.
III.

By a third act, entitled, "an act for punishment of some offences not capital,"—"Every person striking any officer, juror, or witness, in presence of the court in and for the doing of his office, or counterfeiting the hand, or sign manual, or any of the seals of the lord proprietarie, and using such counterfeiting hand or seal within his lordship's jurisdictions to the prejudice of another, or wilful falsifying, corrupting, or embezzling of a record, or giving false witness upon oath in court, or persuading or hiring another to give such false witness, may be judged to lose his or her right hand, or to be burned in the hand, or to any other corporal shame or correction, (not extending to life,) or be fined as the court shall think.—This act to endure till the end of the next assembly."

1642.

Two other distinct acts were made; one, "for the punishment of drunkenness," and the other "for the punishment of swearing." By the former, "every one convicted of being drunk shall forfeit 100 lb. of tobacco toward the building of a prison or such other publique use, as the lord proprietarie or his lieutenant general shall think fit, or if the offender be a servant and have not wherewith to satisfie the fine he shall be imprisoned or sett in the stocks or bilboos fasting for 24 hours."—By the latter, the punishment of swearing was, "by forfeiting 5 lb. tobacco," to be applied as directed by the preceding act.

This code, if it may be so called, wears at this day an aspect of considerable severity in many instances. It is for the most part, however, but a renewal of the bills before mentioned, introduced at the session of 1638–9, upon which we have already been diffuse in our observations.* The penal laws of a nation are said always to exhibit the state of morality therein. As these acts of assembly of this session are the first penal laws of the province, now appearing upon record, which had been regularly enacted as laws, unless the bills before mentioned be considered as such, they could not with propriety have been passed over unnoticed.

plantations; but being *assignable*, according to the act, his lordship or his lieutenant general might sell such convict to some other inhabitant of the province for the term of seven years. The exception of a "gentleman," as above, might possibly find some justification, when we reflect, that the personal labour of such a character would not be worth much on a Maryland plantation.

* See ante p. 120, and what follows in chap. II.

CHAPT. A very important law also, entitled, "an act touching taking
 III. up of land," was first passed at this session, and again re-enact-
 1642. ed at the next session in the same words. It seems to have
 been principally intended to regulate the priority of warrants for
 surveying land; but, as it is altogether a municipal regulation
 relative to private property, it does not fall within the duty of
 our animadversion.*

Some other acts of this session, to wit, "an act providing for
 the planting of corn;" another, "limiting the exportation of
 corn;" and "an act against engrossers and forestallers," seem
 to indicate an apprehension of, or at least a desire to guard
 against, a scarcity of that necessary article of life. The provi-
 sion, "for the planting of corn," seems to have been much to
 the same purport as the former acts on that subject.†

Prepara- Soon after the assembly had rose, more zealous preparations
 tions against the appear to have been taken, to meet the hostilities of the Indians;
 Indians. who now seem to have been excited to their utmost height of
 inveterate enmity towards our colonists. A commission was
 issued on the eighteenth of August to captain Cornwaleys "to
 levy men and command them." This gentleman seems to have
 been always, from the first settlement of the colony, considered
 as its guardian genius. In debates of the assembly he appears
 as a popular leader, and in all military expeditions he is confided
 in as the ablest commander.

The colony of Virginia had been so fortunate, as to have
 settled, not long before this time, "peace and friendship" with
 the Indians of that province. They had nevertheless experi-
 enced some injuries and murders from the Indians of Maryland,
 particularly the Nanticokes, upon whom punishment or retalia-
 tion had been on that account made by the Marylanders. This
 probably excited the Nanticokes to a still more deadly enmity
 towards our colonists. Of all the tribes or nations of Maryland,
 except the Susquehanocks, the Nanticokes appear to have been
 the most warlike; for, they were frequently so bold as to carry
 their hostilities across the bay against the inhabitants of St.
 Mary's. The eastern shore of the province seems, however, to
 have been at present the seat of their warfare; as we may infer
 from the governor's proposal, that military aid from Virginia
 should meet him at the isle of Kent; which appears in a letter

* See it at large in *Kilty's Landholder's Assistant*, p. 248.

† See before p. 147, and 176.

written at this time by the governor of Maryland to the governor of Virginia. CHAPT.
III.

Previous to a perusal of this letter, it will be proper to state two paragraphs of an instrument of writing, entitled, "A Remonstrance of the Grand Assembly," published in Virginia, under the signature of "William Berkeley," the governor thereof, dated as, "given at the grand assembly, at James city, the first of July, 1642," and purporting to be a representation "to the colony of the weighty consequences and benefits redounding thereto by their late consultations." Among various other articles of this legislative statement are the following:—

1642.

"6thly. The treaties and overtures with the governor and province of Maryland, requiring time for maturing, and very successful in the bay of Chissopiack.

"7thly. The settling of peace and friendship with the Indians by mutual capitulations and articles, agreed and concluded on in writing, by many messages and interruptions lengthened."*

The former or sixth article, as above, is involved in some obscurity; especially as no such "treaties," or "overtures" thereto, of any kind, prior to or at this time, appear on our records. It is possible, that a proposal by the governor of Maryland to the governor of Virginia, that the latter should assist the former in checking the hostilities of the Maryland Indians, might form the ground-work of, or "overtures" towards, a treaty of alliance offensive and defensive between the two provinces against the savages; but no treaty or basis thereof, except the letter just mentioned, appears among our records. As this letter throws some light on our provincial transactions of this date, it is here inserted at large.

"Copy of a letter written by our governor to the governor of Virginia.

"HONOURED SIR,—The knowledge I have of your most diligent and provident care of the general good and safety of all his majesty's subjects committed to your charge, and the affection you have to ours of this province your neighbours and fellow subjects, makes me confident to present unto you the necessity, which the barbarous massacres committed formerly upon John Angood and four others of his majesty's subjects in his company belonging to your colony, and now lately again upon eight more belonging to this province, together with the burning and rob-

* See this document at large in *Burk's Hist. of Virg.* vol. 2, p. 64.

CHAPT. III. 1642. bing of their houses, hath drawn both upon yourself and me [the necessity*] of setting forth an expedition against the said Indians, for the vindicating of the honour of our nation, and also to deter the like outrages upon us for the future. For which purpose I have desired this gentleman, colonel Trafford, to present my requests unto you for the aid of one hundred men, furnished and set forth, fitting for the service, from you out of your colony, to be with me at the isle of Kent, where I have appointed our rendezvous on the first of October next, where I will have in readiness one hundred more, if this province will be able to afford them with the safety of those that must be left at home in their houses. Sir, the first harm was yours from the foresaid Indians, which I was desirous to have revenged, had I been able, being nearest to the habitations of them, (as I formerly have done upon the Nanticoke Indians, for the death of one Rowland Williams of Accomack, before the joint expedition made by both colonies.) Since we have received this last mischief, by reason yours by Angood's death and his company was no sooner punished, therefore I doubt not, but you will apprehend the necessity, which our general safety for the future requires, that it be no longer deferred, but put in execution with all the speed that may be, to which I will not fail to add what help I can from hence. This gentleman, colonel Trafford, will be able to inform you of all things, that you shall desire to know concerning it from hence. His worth and abilities are known unto you, wherefore give me leave to refer you to him, and rest your faithful friend to serve you,

*"From St. Mary's,)
23d August, 1642. }*

LEONARD CALVERT."†

From an expression in the foregoing letter, we might infer, that a "joint expedition" against the Indians had been made on a former occasion by both colonies before the one now proposed; but our records afford no other evidence of it; nor do they inform us, whether the aid now asked of Virginia was ever rendered. The government of Maryland continued to make exertions for its own defence. A fort had been erected at or near the Patuxent, in the neighbourhood of which, it seems, were

* These words in brackets are not in the record, but appear to be necessary to make the sense complete.

† See this letter in the book entitled, "Council Proceedings from 1636 to 1657," p. 64.

several scattered settlements of the English. Mr. Henry Bishop, who had before this received injury from the Indians of Patuxent in plundering his live stock, was entrusted with the command of the fort in that quarter, to which the colonists were directed to repair upon any alarm. A proclamation was also issued by the governor, bearing date, August 28th, 1642, for the purpose, as it is expressed therein, "of reducing the inhabitants living weakly dispersed in several plantations to some places of better strength, in case of any sudden inroad of Indian robbers and pillagers." It was, therefore, commanded, "that no inhabitant of this colony presume (until further order or liberty in that behalf,) to discharge, or concur to the discharging of, three guns within the space of one-quarter of an hour upon any occasion whatsoever, unless upon mustering days, except there be reasonable occasion to make an alarm, and that every one, upon the sight of any Indians in any suspicious manner, without delay, use the best means he may to make an alarm by the discharging of three guns, and that every house-keeper, upon the hearing of an alarm, answer it by shooting off three guns, and that every house-keeper inhabiting in St. Michael's hundred, between St. Inigoe's creek and Trinity church, immediately upon the knowledge thereof, carry such women and children as are belonging to his family unto St. Inigoe's fort; there to abide for one month from the date hereof, unless liberty be sooner given to the contrary, and I do hereby command and authorise the sheriff of this county to take charge and command of all the persons able to bear arms within the division aforesaid, and to appoint six able men to keep guard in the said fort day and night during the time aforesaid, and I do further appoint and command, that the house-keepers of the other part of St. Michael's hundred, from Trinity creek southward, do carry their women and children to the house of Thomas Steerman, and that lieutenant Thomas Baldrige take charge of the said southern part, and keep guard in like manner as is afore appointed for St. Inigoes, and further that the house-keepers of St. George's hundred do carry their women and children to the house of Mr. Weston, and that George Pye take charge and command of the said hundred, and appoint and keep guard in like manner as is afore appointed for St. Michael's hundred, and that all several persons of the said several hundreds, able to bear arms, be obedient and assistant unto the said several persons respectively

CHAPT. appointed to take charge and command thereof as aforesaid, as
 III. they will answer the contrary at their peril, and of all the several
 1642. commands aforesaid I do hereby require every one to take notice so far as it may or shall concern them, upon the several pains as by martial law may be inflicted upon the contemners of an ordinance so much importing to the common safety."

The particular nations of Indians, against whom these preparations of defence were now made, and from whom the colonists apprehended danger, seem to be specified in another proclamation issued by the governor in about a fortnight after the former, as follows:—

"By the lieutenant general.—These are to publish and declare, that the Sesquihanowes, Wicomeses,* and Nanticoque Indians are enemies of this province, and as such are to be reputed and proceeded against by all persons. Given at St. Mary's, September 13th, 1642."†

In the midst of these embarrassments of the colony from Indian hostilities, our attention is unavoidably called off, in pursuance of the order of time, to a new arrangement of the government of the province, by the arrival of new commissions, from the lord proprietary in England, both to the governor and his council, and in consequence thereof a new institution of the government.

* As to the *Wicomeses*, see the note before in p. 214.

† See these two last proclamations in the book, entitled, "Council Proceedings from 1636 to 1657," p. 66, 67.

CHAPTER IV.

The new commission for the government—An assembly called and meet— Their proceedings—Debate on the act “touching passes,” or the right of emigration—Exemption of the governor and his servants from militia duty—Debate on the act “providing for officers”—The act “for the support of the government”—An act for the impressment of vessels, men, &c.—Intercourse with the Indians regulated—Colonists compelled to take patents for their lands—Perplexed state of affairs in the province—governor Calvert returns to England—Appoints Giles Brent, esq. to be governor in his absence—Exemption from military duty—Mr. Giles Brent qualifies as governor—Measures to repel the incursions of the Indians—Proceedings of the New Haven settlers on the Delaware—Instructions from the lord proprietary to governor Brent—Influence of the civil war in England on the affairs of the province—An ordinance of parliament relative to the colonies—New instructions from the lord proprietary to governor Brent—Embarrassed state of the trade of the province—Ingle’s rebellion—Hostilities with the Indians—Treaty with the Susquehanocks, proposed by Mr. Lewger—Disagreement of governor Brent thereto—Governor Calvert returns from England with a new commission—Some few variances between the new commission and the former—Perturbed state of the colony—Attempt to call an assembly—Clayborne repossesses himself of the isle of Kent.

Although the government had been hitherto, since the year 1637, conducted under the authority of the lord proprietary’s commission of the 15th of April of that year, herein before frequently referred to ; yet many defects were obvious in that instrument, and which evidently dictated an amendment therein. Influenced most probably by such causes, and possibly also by the representation of his brother—the governor, his lordship, about this time, thought it proper to reorganize his government of the province by a new commission, which should remedy the faults and deficiencies of the former. Although this new commission is expressed at the end of it, as it now stands on the record, to have been—“Given under our great seal of our said province of Maryland, at our fort of St. Mary’s, within our said province, on the fourth day of September, *anno domi.* 1642,” and immediately under it in the record book is subjoined a note, purporting that,—“The same fourth of September was the said commission published at the fort at St. Mary’s ;” yet, as it must have been drawn and executed, under his lordship’s hand and seal in England, where we may suppose he then resided, in the same form and manner as that of 1637, the real date must be

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ment.

CHAPT. referred to some precedent time.* It will be necessary here, to
 IV. state only those material parts of this commission, wherein it
 1642. varies from the former.† It commences with “revoking and determining all former commissions heretofore granted unto our dear brother Leonard Calvert, esq., or to any other person whatsoever for or concerning the government of our said province of Maryland, and discharging all persons whatsoever from our council, who heretofore have been of our council there. Nevertheless, considering and well knowing that the people there cannot subsist and continue in peace and safety without some good government to be ordained and established,” his lordship then proceeds to constitute his brother Leonard Calvert, esq., lieutenant general, chancellor, chief justice, &c.—In the clause, whereby power is given to the lieutenant general to call assemblies, he is authorised “in the name, stead, and place of the lord proprietary to give assent and consent unto all such laws and ordinances as he, our said lieutenant general, &c., shall think fit and necessary for the good government of our said province of Maryland, and which shall be consented unto and approved of by the freemen of the said province, or the major part of them, or their deputies to be assembled by him the said lieutenant general, &c., there from time to time for the enacting of laws within that province, provided that the said laws so to be assented unto by him our said lieutenant general, there in our name, be, as near as conveniently may be, agreeable and not contrary to the laws of England; every which law, we do hereby declare, shall be in force within the said province, till we or our heirs shall signify our or their disassent thereunto under our or their hand and seal, and no longer, unless after the transmission thereof unto us or our heirs, and due consideration had thereupon, we or our heirs shall think fit to confirm the same under our or their hand and seal.”

A material variance will readily be perceived between the clause in the last commission of 1637, giving power to call an assembly, who were only to assent to such laws as should be propounded to them, and the clause to the same purpose in this commission of 1642, as above; in which last, the right of originating laws, by any member in the house, seems to be ceded,

* From a reference in the commission to Giles Brent, of December 23d, 1643, (hereafter to be stated,) the real date of the above mentioned commission appears to have been, November 18th, 1641.

† The reader will find it inserted at large in note (LI.) at the end of this volume.

at least by implication ; subject however to a very inconvenient proviso at the end of the paragraph, by which the lord proprietary reserves to himself the right of annulling such laws by his final disassent thereto. This paragraph seems to be a literal copy of his lordship's letter to his brother, of the 21st of August, 1638, on the same subject, as before stated.*

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In the former commission of 1637, also, power was given to the lieutenant general "to call, adjourn, and dissolve assemblies;" without mentioning the power of *prorogation*, probably considering the power of adjournment as synonymous to that of prorogation. In the present commission "power was granted to the lieutenant to adjourn, prorogue, or dissolve the assemblies to be called." We shall see, however, this power of *adjournment*, hereby vested in the lieutenant general questioned at the next session of assembly.

Some alteration also took place under this commission in the mode of appointing members of the council. Under the former commission three persons, particularly named therein, were specially appointed by the lord proprietary himself "to be of our council of and within the said province." By the present commission power was granted to the lieutenant general "to pass under the great seal of the province commissions for authorizing such person and persons to be of our council there as we shall from time to time appoint by *warrant* or direction under our hand and seal."

The supreme court of justice, (commonly called the provincial court, consisting of the lieutenant general and the council,) was constituted or rather continued under the present commission in nearly the same words and expressions, as those of the former.

The provision made in the former commission for appointing a deputy governor, in case of the "absence" of governor Calvert, was by this extended also to the case of his "death;" the unfortunate incident of which subsequently occurring, as we shall see, occasioned some embarrassment to the government.

In pursuance of the power vested in the lieutenant general, by the foregoing commission of the lord proprietary, of issuing a special commission for the purpose of appointing a council, one was passed, in the name of the lord proprietary, under the great seal of the province, bearing date the 5th of September,

* See before, p. 94-5.

CHAPT. 1642, (the next day after the promulgation of the former,) where-
 IV. by "colonel Francis Trafford, esq., Thomas Cornwaleys, esq.,"
 1642. John Lewger, esq., William Blount, esq. and John Langford, esq., were assigned and appointed jointly and severally, to be of our *privy council* within our said province of Maryland."—The same commission contained also a clause appointing them and every of them "justices and commissioners for conservation of the peace within our said province," with power to issue warrants for offenders against the peace, and to bind them over "to appear before our lieutenant general and the council," before whom were held both the provincial court of the province and the county court of St. Mary's. No assignment of power to them to hear and determine appears in this commission, for that power was vested in them as the council, by the preceding commission to the lieutenant general.†

On the same day of the last mentioned commission to the council, another issued to John Lewger, esq., "to be our secretary of our said province of Maryland, and also judge of all causes testamentary and matrimonial within our said province ;" and "our principal officer and keeper of the acts and proceedings of us and our lieutenant general and council there for the time being, and of and for the entring and recording of all grants by us or our heirs to be made of any lands or offices within our said province, and for the entring and recording of all other matter, acts and things, which by any instructions, laws, or ordinances made or given or to be made or given for or concerning our said province, as also our collector and receiver of all our rents, revenues, and customs, and of all amercements, tolls, profits, and duties whatsoever already due or payable ; to hold the said offices during our pleasure."‡

An assembly called. It seems, from concomitant circumstances, that the arrival of the foregoing new commission from the lord proprietary in Eng-

* The following entry appears in the book, entitled, "Council Proceedings from 1636 to 1657," p. 68.—"16th September, 1642, captain Cornwaleys, esq. being demanded to take the oath of a councillor," (under the above commission it must be understood,) "absolutely refused to be in commission or to take the oath." We have no authority for forming even a conjecture of the motives of this gentleman in refusing to act as a councillor under this new commission. It is certain, that he appears on a variety of occasions to have been much opposed to the proceedings of the governor.

† See this "Commission of the Council" in note (LI.) before referred to, at the end of this volume.

‡ See this commission in note (LI.) before referred to, at the end of this volume.

land had dictated to the lieutenant general the expediency of calling another assembly. For, on the 22d of August, about a fortnight preceding the promulgation of the foregoing commission, the governor issued his proclamation, "requiring *all free-men* inhabiting within the province to be at an assembly to be held at St. Mary's, on Monday the fifth of September next, either *by themselves*, or their deputies or delegates."—The assembly accordingly met on that day, on which day also the two last commissions issued, as we have just seen, for the new organization of the government, by the appointment of a new council and secretary. All the members present on this first day amounted only to eighteen, including the lieutenant general or governor. Notwithstanding it had been, to all appearance, permanently settled at the last session, by the order, afterwards enacted into a law, that "any ten members of the house, at any time assembled, at the usual or appointed time, (whereof the lieutenant general and six *burgesses* to be seven,) should be a house," yet this constitutional law of the last legislature, seems to have been now disregarded. For, it appears from the journal of this session, that one hundred and eighty-two persons, whose names are therein inserted, were entitled to seats in the house, of whom one hundred and six, including the eighteen above mentioned, appeared either "by themselves or their *proxies*," and the names of seventy-six are inserted, who were amerced 20 lb. tobacco each "for not appearing upon call by themselves or proxies." Seventy-three inhabitants of the isle of Kent, (included in the enumeration of the one hundred and six just mentioned,) had appointed Mr. Giles Brent as their proxy.* What occasioned this departure from the representative principle established by law, we have no grounds to ascertain, unless it be that unhappy tendency, which power has, when vested in the populace at large, to occasion a species of intoxication, and to deprive them of a rational use of that liberty which is so essential to their happiness. That this was the case now in England, is demonstrated in history, and our colonists, as it seems from symptoms before ex-

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And meet.

* This affords some *data* for forming an estimate of the number of inhabitants of which the colony at present consisted. (Supposing the number (192) to have been heads of families, and counting five to a family, the colony would have consisted of about nine hundred inhabitants—men, women, and children; of whom three hundred and sixty-five would be appropriated for the isle of Kent. Mr. Brent, (proxie for that island,) was at this time lord of the manor of Kent fort, and probably resided thereon at or near what is called Kent Point.

CHAPT. hibited and herein noticed, had largely imbibed those unfortu-
IV. nate discontents.

1642. One of the first subjects, which occupied the attention of the
Their pro- house, demands some notice here, on account of its importance
ceedings. as a constituent principle in the provincial government. We
have before hazarded a conjecture, that the word "*freemen*,"
which so often occurs in the earliest proceedings of the province,
and indeed in the charter itself, applied only to one who was a
"*freeholder*."* This became a question at this session, as ap-
pears from the following entry on the journal.

"Mr. Thomas Weston, being called, pleaded he was no *free-
man*, because he had no land nor certain dwelling here, &. ; but,
being put to the question, it was voted, that he was a *freeman*,
and as such bound to his appearance by himself or proxie;
whereupon he took place in the house."

The doubt expressed here by the member himself, that, not
being a *freeholder*, he was not to be considered as a *freeman*,
demonstrates at least, that some opinion to that purpose had been
heretofore entertained in the province, and that the members of
the house had been heretofore generally *freeholders*. Although,
therefore, the house here expressly decided, that it was not ne-
cessary, in order to entitle a freeman to a seat in the house, that
he should be a freeholder; yet, from the temper of the times and
irregular constitution of the house at this session as a legisla-
tive body, much stress cannot be laid upon this legislative deci-
sion of so doubtful a point.

Debate on the act "touching passes," or the right of emigration.
Another important question occurred on this first day of this
session. An act of assembly had been passed at the last ses-
sion, entitled, "an act touching passes;" which, although unim-
portant in itself, was now productive of considerable discussion,
involving two important principles; First, whether the lieuten-
ant general, as president (or speaker,) of the house, could refuse
to put a particular question to the house, moved for by any mem-
ber; and secondly, how far the right of every inhabitant to de-
part from the province might be restricted.

The act of the last session, which seems to have occasioned
this uneasiness, was of the following tenor.—"No man, after
the publishing hereof in the county, may, without pass from the
chief judge of the county in commission for the time being,†

*See before chap. I. p. 47-8, note.

† The chief judge of St. Mary's was the governor himself, and by a commis-
sion in February, 1640, Mr. Giles Brent had been constituted chief judge, as

transport any inhabitant out of the province, being indebted by judgment upon record, or another man's servant, or the party's own servant, and indebted by judgment upon record, (except it be an apprentice,) or otherwise obnoxious to justice; and a pass may not be granted to any one until he have set up a note at the usual place at the least five days before, (whereof one to be a Sunday or holy day,) signifying such his intent to depart out of the province: and if the party, of whom the pass is desired, know or be informed, that the party is indebted, or another man's servant, or the party's own servant as afore, or obnoxious to justice in some other county,* he may not grant a pass, till the party have obtained a certificate from the commander of the county, which may not be granted afore another like note there set up to the purpose, and in the manner as aforesaid, upon pain that the offender or offenders to the contrary shall make fine and recompense to the parties grieved. This act to endure till the end of the next assembly."†

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This act, it seems, had occasioned particular uneasiness in the isle of Kent, and accordingly, on the first day of the session, Mr. Brent, who was proxy, as before mentioned, for the inhabitants of that island,—“moved, as from the inhabitants of Kent, that it might be declared by the house, whether the inhabitants may freely without leave depart out of the province, being engaged or obnoxious to justice.—And it was answered by the governor, that he did not consent, that it should be decided by or in this house.”

“Then the lieutenant general adjourned the house till the third beating of the drum, four o'clock this afternoon.”

Why the governor should have exercised this intemperate warmth on the subject, does not appear. The purport of Mr. Brent's motion is here expressed on the journal rather obscurely; but it seems to have been merely to ascertain the sense of the house, whether the act relative to this subject, to wit, the “act touching passes,” before stated, should be continued or not, in-

well as commander, of the isle of Kent.—See this commission in note (XXXIX.) (before referred to,) at the end of this volume.

* This must have been intended as prospective, that is, in contemplation of other counties to be laid out; for, there was but one county yet in the province. The isle of Kent, by the last regulation, was to be considered as a hundred of St. Mary's county.

† See this act, in the record book, entitled, “Assembly Proceedings from 1637 to 1658,” p. 241, and in “Lib. C. & WH,” p. 99.

CHAPT. as much as it was a temporary act "to endure till the end of the
IV. next session."

1642.

The motion rested, as above, until the next morning, (September 6th,) when "Mr. Brent desired, it might be put to the question, whether the house had power to decide the right of a freeman to depart out of the province at their pleasure, unless they were indebted, or otherwise obnoxious to justice.*

"The governor refused to put it to the question to the freemen to determine thereof as judges of the matter in question."

The governor could have objected to the right of the house to legislate upon the subject on no other principle than that of the common law, (mentioned in the note below,) which prohibited a subject from departing out of the realm without special license from the king; and that, as the lord proprietary had the same prerogative, in virtue of his palatine *regalia*, no inhabitant of the province also could depart therefrom without special license from his lordship or his lieutenant general.

The governor ought to have been sensible, that these were not times for an English governor of a province to aspire to such a high toned exertion of prerogative. His more prudent mentor, (Mr. Secretary *Lewger*,) probably thought so; for he immediately rose, and (according to the journal,) "spoke, not to the question, but as a *councillor*;†—that he thought the matter *was* to be put to the question, and that it could not be rightfully denied to them; and that the house hath power to decide such things as shall be put to the question, both by former usages and precedents of the house, and by the writ calling them to consult, and by his lordship's intent, that the house should have such

* We have touched upon this subject before in note (D.) in our "Introduction to this History," (already published,) wherein we have mentioned the doubt which was entertained, after the repeal of the statute of fugitives, (5 *Rich. II. c. 2*,) by that of 4 *Jac. 1, c. 1*, whether the common law did not prohibit any subject from going out of the realm without special license previously obtained. But although this position was endeavoured to be maintained, shortly after the repeal, by the crown officers, particularly by the attorney general and the recorder of London in the case of the King vs. the earl of Nottingham, in the court of exchequer, 7 *Jac. 1*, (see *Lane's Rep. 42*,) yet the law seems to have been subsequently settled, agreeably indeed to some former decisions on the point, that every man might go out of the realm, when he pleased, without any license for that purpose, unless, as Mr. Brent has expressed it above, he was "indebted or otherwise obnoxious to justice," in which case he might be prohibited from emigration by a writ of *Ne exeat regno*.

† Mr. *Lewger* was appointed one of the council by the commission of the 5th of September; see the commission note (LI.) before referred to.

power, expressed in the acts formerly consented unto and sent over by his lordship.”

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The governor, perceiving perhaps that he had gone too far, seems to have partly withdrawn his objection. “Upon further debate it was declared by the governor, that it was the common right of all inhabitants to depart out of the province at their pleasure, unless indebted or obnoxious to justice, or *unless there be some transcendant cause, for the safety of the people*, for the lord proprietary or his substitute to over-rule that right in some particular cases for a convenient time.”

The closing condition,—“for the safety of the people,” seems to wear too much of the appearance of an insidious statement of the position. There is scarcely an act of political despotism to be found in history, whether exercised by a mob or by a single tyrant, by a parliament or by a king, which has not its pretended foundation—in the safety of the people. We are not able, at this day, to perceive readily any pressing necessity, which should have induced the governor to an anxiety for the exercise of the royal prerogative of prohibiting the inhabitants of the province from the free enjoyment of the right of departure. Possibly indeed some apprehensions might have been entertained at this time by the government, that emigrations from the province would too much weaken the colony, especially when they were suffering under a war with the Indians. It is certain, however, that the foregoing statement of the law by the governor upon this question, did not give general satisfaction; and a protest of some of the members of the house, “touching the departure of inhabitants out of the province without leave,” was read on the last day of the session.*—“The lieutenant general then consented, that this should be entered for his answer, instead of the former, touching that point,—that he declareth it to be the common right of all inhabitants to depart out of the province at their pleasure, unless indebted or obnoxious to justice.” He must also have finally yielded to the house their right of legislating upon the subject; for, “An act touching passes” appears among the laws of this session; which, in order to shew its variance from the former, may be here inserted.

“No man after publishing hereof in the county without consent of the chief judge of the county in commission for the time

* This is so stated in the journal, but no protest appears therein as the record now exists,

CHAPT. being, shall transport any inhabitant out of the province that is
 IV. obnoxious to justice for some malefice, nor without consent of the
 1642. party or parties interested may transport any one against whom
 there is an action or judgment (unsatisfied upon record, or that
 is another man's servant, or the party's own servant, and liable
 as afore, (except it be an apprentice,) upon pain of making recom-
 pense to all parties grieved. 'This act to endure for three years
 from this present day.'*

Exemp-
 tion of the
 governor
 and his
 servants
 from mili-
 tia duty.

Another cause of uneasiness arose, on the first day of the ses-
 sion, on a bill, drawn and returned to the house, by a committee
 for that purpose, entitled, "An act for an expedition against the
 Indians." After it had been read, the governor demanding to
 be exempted from the levy, it was put to the question, whether
 a clause for his exemption should be inserted in the bill, and
 that it should, was voted by thirty-eight voices,—denied by one
 hundred voices.†

This uncourtly rejection of the governor's request or demand
 seems to indicate, that a general opposition to his measures run
 deep in the minds of the colonists at this time. We should have
 supposed it to have been the part of a patriotic governor to have
 volunteered his services at the head of an expedition against the
 natural enemies of the colony. When a chief shrinks from his
 duty, he must expect an abatement in the ardour of his follow-
 ers. Notwithstanding this vote of the house, however, it ap-
 pears, that such a clause of exemption, not only for the gover-
 nor himself, but for his servants, was finally inserted in the bill,
 though not without the opposition of captain Cornwaleys, who
 voted against it, "by reason of the clause exempting the gover-
 nor's servants."‡

* See this act of Assembly in the book, entitled, "Assembly Proceedings from
 1637 to 1658," p. 295. In illustration of these acts of assembly it may not be
 amiss to mention, that the statute of fugitives, (5 Rich. ii. c. 2,) imposed the
 penalty of a forfeiture of the vessel on the master of any vessel, who carried the
 persons departing out of the realm. A law, similar to these Maryland acts, re-
 lative to "passes," is said to exist at this day in the English colony of Jamaica.
 "Every person, who has resided six weeks in that island, must obtain from the
 office of enrollments a passport before he takes his departure; and the captain,
 who admits him as a passenger without receiving such passport, is liable to a
 penalty of £1000."—Extract from a "Tour through Jamaica," in 1811, publish-
 ed in the Port-folio for 1812, vol. 1, p. 536.

† These "voices" on both sides included the votes of the members present as
proxies, as well as in their own right, the house consisting, as before mentioned,
 of only eighteen members.

‡ The record states, that this "bill" passed by all except that captain Corn-
 waleys "denied it for 15 of his proxies of St. Michael's hundred."

The first section of the act, containing this exceptionable clause may be here inserted, "It shall be lawful to the lieutenant general or other captain or captains by or under him authorised to make an expedition against the Susquehanahs or other Indians as have committed the late outrages upon the English at such time and in such manner as he or they shall think fit, to take out of every county or hundred within the province the third man able to bear arms, such as he or they shall think fit to go upon the said expedition, except that the lieutenant general and his apprentices* are not to be reckoned in any hundred to any purpose of this act." The other sections of this act detail the manner in which the men were to be equipped.

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1642.

As all the acts of the last session had been limited "to endure till the end of the next session," much of the discussion of this session consisted in debates about the propriety of continuing or rather re-enacting such acts as had been passed at the former session. Among these, that entitled "An act providing for officers," under which the appointment of a sheriff had been regulated, as before stated,† received at this session a singular opposition. The act had been construed, as giving to the lieutenant general power to appoint any person whatever to any office or command whatever, "so there be reasonable fee allowed for it." Captain Cornwaleys and Mr. Brent are stated in the journal as being much opposed to re-enacting this law, "as being unnecessary, as giving away their liberties, and as being unlimited in point of sheriff's recognizance and number of offices to be imposed, and as against common right and decency—compelling men to be hangmen."

Debate on
the act
"providing
for officers."

These objections, except that relative to the office of sheriff, seem to be founded on rather a strained construction of the act. The power of the lieutenant general to appoint any person to any office is therein expressly confined to "any person that hath been *freed by service*;" and, although this might have been a hardship upon such men, yet the hardship does not appear to have been of such a nature as to have been very oppressive upon men of that class of life, who, just emancipated from manual servitude and labour, might be supposed to have been glad of any office, to which "a reasonable fee" was annexed. To "com-

* The word "apprentices" may be understood here, as synonymous with "indentured servants" belonging to the governor.

† See before, p. 222—5.

CHAPT. IV. pel" even such men "to be hangmen," indeed, might be deemed an act of oppression; but, unless some particular and uncommon incident had then recently occurred wherein such oppression had been exercised, it was a remote conclusion, that the governor would exercise power in so arbitrary a manner. It may be added, that the common law at this day, still imposes on the sheriff, as a part of the duty of his office, that of being a hangman, unless he should be able to procure some other person, at his own expense, to perform the disagreeable duty.* This part of their objections to the act must, therefore, have been mere declamation. As to the "unlimited" power in taking recognizance of the sheriff, what is a well known truth at this day, might, perhaps, have been as much so then, that is, that too much caution as to the *sufficiency* of such recognizance cannot well be used. The paucity of inhabitants in the colony, or at least of those well qualified for offices, might have been a reason also of "imposing" a number of "offices" on one man. Upon the whole, these objections seem to exhibit symptoms, rather of unreasonable discontent than of a temperate and patriotic opposition to arbitrary measures of government.

The governor, however, appears to have shown on this occasion a temperance and mildness, which does him much honour. "He consented, that an exception should be made of the office of hangman; and that the sheriff's recognizance might be limited to such a value as the business might amount unto committed to his trust, as 10,000 lb. tobacco, or the like sum.

"With these amendments the bill was thought fit to pass, by the governor, secretary, surveyor,† and Mr. Binks, denied by by the other four."

* It is not impossible, that this objection—"of compelling men to be hangmen,"—might have some allusion to *Dandy's* case before stated, (p. 179,) but, there does not appear to have been any thing *illegal* in that case, since the office of "public executioner" was voluntarily undertaken by Dandy, as a condition of pardon on a judgment or sentence of death. Our Saxon ancestors thought differently of the office of "hangman." "*Cornifex fuit splendidi officii, appellatio apud Saxones nostros. In anno 1040, Rex Hardecanutus Thronum suum carnificem, et alios magnæ dignitatis viros, Londinum misit.*" Spelman's Gloss. verb. *Carnifex*.

† Mr. John Langford had been appointed surveyor-general, by commission dated March 24th, 1641, (1642, N. S.) "during his natural life." He was consequently the "surveyor" above mentioned. He was an able and zealous friend of lord Baltimore not only now in this province, but afterwards in England, as will appear in this history. He had before this, in the year 1639, filled the offices of sheriff and coroner in the isle of Kent. (See before, p. 89.)

From this it may be inferred, that there were only *eight* members present. The house being equally divided, the bill, consequently, did not pass; and accordingly we do not find any act with that title in the list of the laws passed at this session. The governor, therefore, must have been under the necessity of exercising the lord proprietary's prerogative in selecting and appointing a sheriff, or the colony would have been deprived of that ministerial officer so essential to the administration of justice according to the laws of England. In confirmation of which supposition, we find that a commission issued, in about ten days afterwards, to Edward Parker, bearing date September 15th, 1642; appointing him "high sheriff of our county of St. Mary's until the first of October, 1643," and authorizing him "to appoint his bailiff or under-sheriff in every hundred within the said county at his pleasure."

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IV.
1642.

The act of this session entitled, "an act for the support of the government," varied somewhat in expression, though not apparently in substance, from that of the last session with the same title. By this—"For the better support of the lord proprietary all tobacco shipped to be transported out of the province, (except to Virginia, and except to any of the king's dominions where customs are used to be paid to his majesty,) shall pay a custom of five in the hundred to his lordship." The exception in the former act was—"to England, Ireland, or Virginia as the last port."—The former also was to endure only "till the end of the next session;"—this was "to continue for three years."—As the export of tobacco from Maryland to Holland in Dutch vessels became, in a few years after this period, an object of legislative attention, we may suppose, that some trade of this sort now constituted a basis for these customs given to the lord proprietary.

The act for
the support
of the go-
vernment.

There were but few original acts passed at this session. Most of them, (twenty-five in number,) were but the laws of the last session re-enacted. The only original act of this session, yet unnoticed by us, was that entitled, "an act providing some things for the better safety of the colony." This seems to have been made to enable the lieutenant general "to press or take away vessels, men, provisions, arms, ammunition, or other things necessary for defence, at the most usual rates of the country, and the price or hire thereof to charge upon the inhabitants. Any person receiving corporal harm in the service, whereby he is disabled from labour or his calling, to be maintained at the charge

An act for
the im-
pressment
of vessels,
men, &c.

CHAPT. of the province.”—Compensation to be made to any person
 IV. “for loss of property by forsaking his house and goods.*”

1642.

Except some petty plundering committed by the Indians on the inhabitants of St. Clement’s hundred, some time in October of this year, for which Mr. Gerard and Mr. Neale were authorized by commission from the lieutenant general to threaten and punish them, if necessary, our materials furnish no other occurrence of the present year than the appointment of Mr. Giles Brent, by commission of the 16th of December, “to be commander of our isle and *county* of Kent;†—to be chief captain in all matters of warfare;—and to be chief judge in all matters and things civil and criminal, happening within the said island, not extending to life or member or freehold.” In the same commission also, “William Ludington, Richard Thompson, and Robert Vaughan, gent., were appointed to be commissioners within our said island to all powers and effects as to commissioners of a *county* by the law of the province do or shall belong.”‡ Commissioners of a county appear to have been then considered as having, not only the powers of conservators of the peace at common law, but as thereby authorized to hold a county court.§

* “Assembly Proceedings from 1637 to 1653,” p. 300.

† This seems to be the first passage, which occurs in the records, wherein the *isle of Kent* was considered as a *county*. By the bill of 1638–9, (No. 13.) entitled, “an act for the government of the isle of Kent, (before referred to, and inserted at the end of this volume in note XXXI,) the island was erected into a *hundred*, to be considered as within the *county* of St. Mary’s, “until another county should be erected of the eastern shore, and no longer.” It appears to have been the sense of those who administered the provincial government in its earliest period, that no *legislative* interposition was necessary for the erection of a county within the province. It possibly might have been so considered, in confirmity to the original distribution of England into counties; which is said to have been the sole executive act of king Alfred. (*Spelman’s Gloss. verb. Comitatus.*) Nor is any act of assembly to be found for the original erection of any of the counties in this province, (except that of 1650, ch. 8, “for the erecting of *Providence* into a county, by the name of *Ann Arundel*,”) until the year 1695, when by an act of that year, (ch. 13,) a county was “constituted” by the name of *Prince George’s county*, and the *bounds* of the several counties of St. Mary’s, Charles, Prince George’s, Talbot, Kent, and Cecil were therein “regulated;” and, by a distinct clause therein, the *isle of Kent* was “made part of Talbot county.”—We may, therefore, suppose that the power of erecting a county within the province was considered as a part of the palatinate *regalia*, and a personal prerogative of the lord Baltimore as lord proprietary of the province; but no proclamation or other *executive* document for the erection of any county within the province in the earliest period of the settlement of the province, or prior to the restoration of the lord proprietary in the year 1658, appears on the records.

‡ “Council Proceedings from 1636 to 1657,” p. 92.

§ See the act entitled, “an act for judges,” passed at the last July session and re-enacted at the following session, before stated, p. 221.

These gentlemen seem, therefore, to have been now first authorized to hold a county court in the isle of Kent. CHAPT.
IV.

The colonists appear now to have extended themselves, in a scattered population, over a considerable portion of that peninsula or neck of land formed by the Patowmack and Patuxent rivers. How far to the westward from the Chesapeake, it does not clearly appear.* The peninsula seems, however, to have been sufficiently occupied by them to authorize the government to claim a right of excluding the Indians from entering their territories within a prescribed line drawn from the Patuxent across to the Patowmack. This measure they were provoked to adopt in their own defence against the predatory hostilities of the natives; though it appears to have been of short continuance. The bickerings and discontents among the colonists, imported perhaps from the mother country, seem to have rendered them apparently insensible to dangers from the savages. 1643.
Inter-
course
with the
Indians re-
gulated.

The governor states the reasons for this measure in a proclamation, issued by him for that purpose, bearing date the 16th of January, 1642, (O. S.)

“Whereas I am determined, by all possible care and diligence, to provide, that the colony be put in safety, not only from all danger of the Indians, but from fear of any, I have thought fit to publish and declare hereby, that I intend instantly to dispatch messengers to the neighbouring Indians to forewarn them of coming among or near the English till further order be taken therein, and to charge them not to come on this side the neck between the back river of Patuxent and the main river towards Nicholas Hervey’s, neither by land or water, upon peril of their life that shall adventure further or without the said bounds either by land or water, and if there shall be any occasion of message or treaty with me, to send with the messenger or messengers a flag or fane of white fustian, with his lordship’s arms in wax ensealed thereon, to be visibly carried or borne by such messengers or an Englishman in their company; Therefore, I do hereby authorize all or any the English of this colony to shoot or kill any Indian or Indians in any the parts about Patuxent river, that shall be seen or met either upon the land or water without the said bound after six days after the date hereof, except some

* On the 7th of March, 1641, (O. S.) the surveyor was directed to lay out “for captain Thomas Cornwaleys, esq., 4000 acres of land in any part of Patowmack river *upward of Port Tobacco creek.*” From which we may infer, that *settlements* were then forming at that distance westward from the Chesapeake.

CHAPT. Indian or Indians or some of them have or bear visibly such
 IV. white flag or fane aforesaid, or with an Englishman in their com-
 1643. pany, or shall without resistance yield themselves to the Eng-
 lish upon demand; and upon coming of any such Indian mes-
 sengers to bring him or them to me without delay.”*

Besides this measure of excluding the Indians from the occupied territories of the colonists, it was contemplated, by those who were entrusted with the administration of the government, to “set forth” an expedition against them, so as by such defensive annoyance, either to drive them further from the colony or to quiet their hostilities. But uneasiness seems to have arisen among the colonists, lest the discharge of their personal military services on this occasion should so interfere with the preparatory labours for the ensuing crop as to deprive them of the means of livelihood. In the first settlement of the province, the clearing of the grounds, intended for the growth of either Indian corn or tobacco, rendered the latter part of the winter and the commencement of the spring a most important part of the year with the planters, and their industry and labours during that season enabled them to calculate with some probability upon the profits or result of their succeeding crops. To allay these uneasinesses the governor issued the following proclamation:

“By the lieutenant general.—Whereas I understand of divers jealousies and fears abroad in the colony touching the Indians, and the expectation of a great charge and hinderance this year either in making a march upon them, or in guarding against them, to the disanimation of the people and foreslowing their usual diligence and alacrity in proceeding in their labours for the next crop, for remedy whereof, and to assure them of what consideration is had of their safeties and ease, I have thought fit to publish and declare hereby, that all possible diligence is and shall be used for the furnishing the county with ammunition, and that, as soon as conveniently may be, there shall be an expedition set forth against the Indian enemies of this province, at the sole charge of his lordship, (excepting the persons of the soldiers to make the expedition withall, for whose service the country shall be charged,) and that capt. Cornwaleys, esq., is appointed and hath undertaken to go as general of the said expedition,†

* “Council Proceedings from 1636 to 1657,” p. 92.

† His commission for that purpose appears on the records immediately preceding the above proclamation, and bears the same date.

to whom I have given all purchase* that shall be made upon the enemy during the said expedition, to be by him disposed of for the encouragement of volunteers, that shall set themselves forth and serve at their own charge, and for the reward of his soldiers as he shall find them to deserve; and further for the greater encouragement and relief of those that shall go upon this service, I will use all circumspection that may be, that the said expedition shall be so made, and (by God's help,) performed, that it shall be no considerable hindrance to any one's crop, and that [as to] the debts of those whose present abilities will not reach to the satisfying of their creditors without the grievous pressure and disabling them for their necessary subsistence for the future, I will use means with their creditors, (if they be inhabitants of this province,) to forbear until the next year, which I have already assurance of from some of the chiefest.—Given at St. Mary's, 23d January, 1642.”†

CHAPT.
III.
1643.

It has been before observed, that the colonists of St. Mary's had not only been liable to the invasions of the Susquehanock Indians, but that the Nanticokes also had been so bold as to cross the bay and commit hostilities upon them. Accordingly war had been formally declared against them as well as the Susquehanocks, by a proclamation for that purpose in September last, as before mentioned. But it would seem, that within a day or two subsequent to the last mentioned proclamation of January 23d, the governor had agreed to a truce with the Nanticokes, for the purpose of forming a treaty of peace with them. In order, therefore, that they should not be liable to the severe penalties denounced against those Indians, who should presume to intrude within the limits of the colonists on the peninsula between the Patowmack and Patuxent rivers, as prescribed by the proclamation of the 16th last, it became necessary to issue another proclamation, setting forth this matter and revoking the former, as follows:—“By the lieutenant general.—Whereas by a late proclamation dated the 17th‡ of this instant month the English were authorised to kill any Indians in any the parts about Patuxent

* The word “purchase” here must mean the right of booty or plunder of whatsoever kind, that might be taken from the Indians. It was so understood occasionally by old English writers nearly cotemporary with our first colonists.—See *Johnson's Dict.* who cites *Shakspeare*.

† “Council Proceedings from 1636 to 1657,” p. 95.

‡ This is so in the record; but it evidently alludes to the one before stated, which is dated in the record, the 16th.

CHAPT. river, that should be met with upon the land or water on this side
 IV. the neck between the back river of the Patuxent and the main
 1643. road towards Nicholas Hervey's, with certain exceptions therein
 mentioned ; now I do hereby, upon some reasons and accidents
 since happening,* utterly repeal and reverse the said proclama-
 tion, and strongly prohibit, upon pain of death, that no English,
 within the county of St. Mary's or any other part of the pro-
 vince do kill or shoot any Indian whatever, (other than such as
 he shall know to be Sesquihanowes or Wicomeses,) unless first
 assaulted or put in bodily fear of his life by the Indian ; And
 whereas, by one other proclamation, dated the 13th of Septem-
 ber last, the Nanticoke Indians were declared to be enemies of
 the province, I revoke likewise hereby the said declaration, and
 do publish and declare that there is a treaty of peace betwixt me
 and them, and a truce of six weeks agreed upon for the finishing
 of the treaty, and hereupon have taken them into his lordship's
 protection for the time aforesaid, but for the better securing of all
 English inhabitants of the province from all harm that may hap-
 pen to them through the treachery and falsehood of any Indians,
 I do forbid all the said English to entertain or harbour in their
 houses any Indian whatsoever without special license or appoint-
 ment from me, and, upon any Indian's refusal to depart upon ne-
 cessary demand given, to expel them by violence, but not to the
 the killing them unless they shall assault the life of the English.—
 Given at St. Mary's this 26th of January, 1642."†

Colonists
 compelled
 to take pa-
 tents for
 their lands.

Amidst these hostilities of the Indians, and some subsisting
 discontents among the colonists, it became necessary for the
 government to pay some attention to some abuses and ill prac-
 tices which had arisen in the colony relative to "rights to land."
 Divers adventurers into the province had obtained, it seems, in
 virtue of the "conditions of plantation," on their emigration
 here, warrants for the quantity of land due to them on such
 emigration. It would seem, that after having their given quan-
 tity of land laid out for them, agreeably to their warrant, they
 had seated themselves thereon, and so remained without giving
 themselves the trouble or expense of obtaining grants or patents
 for the lands thus obtained by them, whereby it appeared, that

* It is possible, that some friendly Indians had been unjustly shot and killed, under the above recited proclamation of the 17th (16th) of January. But this is mere inference, the records being entirely silent as to the "reasons and accidents" above alluded to.

† "Council Proceedings from 1636 to 1657," p. 97.

they meant to occupy the lands without making themselves liable to pay any rent for the same to his lordship. To prevent this intended fraud, a proclamation was issued, (April 2d, 1643,) requiring that "all persons pretending any right unto any lands within this province by virtue of any former conditions of plantation or special warrant, shall, within twelve months from and after the date hereof, come and make appear their right so pretended, and take out grants of the same upon pain of being refused grants after the said time."*

CHAPT.
IV.
1643.

It will be proper to advert in this place to two several attempts on the part of the governor to call an assembly of the province about this time. A proclamation was issued on the 16th of December last, (1642,) for a general assembly of the freemen to meet at St. Mary's on the third of February ensuing. But by another proclamation of the first of February, 1642, (1643, N. S.) the assembly was dismissed and all men discharged of their attendance on the day appointed. Another proclamation issued on the 28th of March, 1643, for the freemen to be at a general assembly on the 3d of April following. But, (as Mr. Bacon has observed,) "it does not appear by any record, whether they met accordingly, or what their proceedings (if any) were."† These occurrences strongly indicate the unsettled state of affairs in the province at this period of time.

Perplexed
state of af-
fairs in the
province.

Much perplexity also seems to have pervaded the mind of the governor at this time through causes, which our materials do not sufficiently develope. Notwithstanding the danger in which the colonists were placed, from the hostilities of the Indians, particularly the Susquehanocks, as appears from what precedes, and the resolution entered into by the government of repelling their invasions by an expedition against them, as before mentioned, yet this measure seems to have been soon unaccountably relinquished, and the frontiers of their settlements on the peninsula left in a defenceless state. To this purpose a proclamation was issued by the governor, on the eighth of April, as follows:—

"Whereas by a proclamation, bearing date at St. Mary's, the 23d of January last,‡ upon certain hopes then presumed upon, of means to go a march upon the Susquehanahs, I did declare

* "Council Proceedings from 1636 to 1657," p. 98.

† See Bacon's edition of the laws of Maryland, under the date of 1643; and the record book in the Council Chamber, entitled, "Assembly Proceedings from 1637 to 1658," p. 804.

‡ Ante, p. 248-9.

CHAPT. to the colony, that there should be an expedition set forth at his
 IV. lordship's charge, with other things therein contained, which
 1643. means not being yet found answerable to my hopes, I do think
 fit to advise further of the intended expedition, and therefore do
 hereby annul and revoke the said proclamation, and the obliga-
 tions therein undertaken on his lordship's behalf, and all powers
 and commissions therein given touching or concerning the said
 expedition, until I have further considered thereon."*

Governor
Calvert re-
turns to
England.

This seems to have been connected with a further resolution now formed by the governor, dictated apparently by the perplexed state of the affairs of the province, and, perhaps, in part occasioned also by the confusion arising from the civil wars now raging in the mother country. From some cause not assigned nor clearly to be inferred he had formed the resolution of returning home to England, and, in virtue of his last commission from his brother, he appointed Mr. Giles Brent deputy governor in his absence. To make this appointment known, he issued the following proclamation :—

Appoints
Mr. Giles
Brent to be
Governor
in his ab-
sence.

“By the lieutenant general.—Whereas I am determined to go for England, I do hereby publish and declare to all inhabitants of this province, that I have nominated, appointed and elected Mr. Giles Brent, esqr., to be lieutenant general, admiral, chief captain, magistrate, and commander, as well by sea as land, of this province of Maryland and of the islands to the same belonging, in as large and ample manner as his lordship by his commission under the great seal, bearing date at St. Mary's the 4th of September, 1642,† hath authorised me, for the present during my intended absence, until further order from his lordship therein.—Given at St. Mary's this 11th April, 1643.”‡

Exemp-
tion from
militia
duty.

On the same day, which probably was but a day or two before his departure, he executed an instrument of writing, which will appear to us at this day but illy calculated to conciliate the esteem and affection of the colonists. It will be recollected, that at the last session of assembly an act had passed, entitled, “an act for an expedition against the Indians ;” in which act a clause of exemption from military service, not only for the governor himself but for his “apprentices,” had been inserted and passed, though much opposed by some influential members of

* “Council Proceedings from 1636 to 1657,” p. 98.

† See this commission, as before referred to, in note (L.I.) at the end of this volume.

‡ “Council Proceedings from 1636 to 1657,” p. 99.

the house, particularly captain Cornwaleys.* In virtue of this clause in this act, as we may suppose, he now, immediately preceding his departure, granted a special writ of privilege, or *charter of exemption*, if it may be so called, in the name of the lord proprietary, to a certain "Nathaniel Pope and his menial servants."—The instrument of writing is as follows :—

CHAPT.
IV
1643.

"Cecilius, by our sovereign lord king Charles, lord proprietary, &c., to all persons to whom these presents shall come, greeting; know ye, that we, for divers good causes us thereunto specially moving, have exempted, and by these presents do exempt, the persons of Nathaniel Pope and his menial servants being nine in number, from all watches and wardings, and from all attendance at musters and trainings, and from being called or commanded out of or from his house to or upon any levy, march, or party without or against his will or consent, and we do hereby will and require all our captains, commanders, and officers whatsoever, not to infringe or violate any the exemptions aforesaid at their peril.—Given at St. Mary's this 11th of April, 1643. Witness our dear brother, &c."†

Having no authority to determine in what capacity Nathaniel Pope stood in relation to the lord proprietary or his brother the governor, we are not enabled to decide with certainty upon what principle of law the aforesaid charter of exemption was granted. If *Pope* was a *tenant* upon some of the demesne-lands of the lord proprietary *reserved* and cultivated for his own use, or if he acted as an overseer or steward of such estate specially reserved by the lord proprietary, to be cultivated at his own expense and for his own use, it does appear, that in virtue of the lord proprietary's *jura regalia* his *tenants in ancient demesne* or his menial servants upon such demesnes, like those of the king, would have been entitled to various privileges;‡ and although an exemption from military or militia duty be not particularly mentioned as one of those privileges, yet it appears to be within the like reason, especially as that of being exempted from *taxes* and *tallings*. That particular orders or profession of men, such as attorneys of the court of king's bench, were entitled to *writs of privilege* exempting them from militia duty or mustering in trained bands, seems to have been adjudged in one or two cases

* See before, p. 242.

† "Council Proceedings from 1636 to 1657," p. 99.

‡ 4 Inst. 269. 2 Inst. 542. 3 Durnf. and East. 73

CHAPT. prior to the first settlement of this province.* More recent cases
 IV. also acknowledge this privilege of exemption, until a late mili-
 1643. tia law in England gave the alternative of either providing a substitute or paying a certain sum of money, when the militia service ceasing to be merely *personal*, the privilege ceased also.† But, waving the legality of this measure of the governor, it certainly appears to have been dissatisfactory to the people of the province, and consequently at this period of time highly impolitic.

Mr. Giles Brent qualifies as governor. The governor must have left the province in a day or two after the last mentioned transaction; for, on the 15th of April, 1643, Mr. Giles Brent qualified as governor, in virtue of his appointment before mentioned,‡ by taking the oath of lieutenant general, which was administered to him by the secretary—Mr. Lewger. It will be recollected, that the fifth section of the act of 1638, (1639, N. S.) ch. 2, entitled, “An act ordaining certain laws for the government of the province,” required the lieutenant general to “take an oath to administer equal justice to all persons, without favour or malice of any one.” No form of oath, however, was prescribed by this act; but it appears, as we have before stated,§ that this clause of this act had reference to one of the thirty-six bills of the same session, engrossed but not passed, entitled, “An act for the several oaths to be taken by judges and public officers,” wherein the oath of a *judge* is prescribed and stated at large. But no special oath for the *lieutenant general*, except as *judge*, is prescribed by that bill. As the oath now taken by Mr. Brent developes in some measure the nature of his powers at this time as lieutenant general, it is here inserted, as follows:—

“You swear, that you will be true and faithful to the right honourable Cecilius, lord proprietary of this province of Maryland, and that you will defend and maintain to the utmost of your power all his just rights, interests, royal jurisdictions, and

* See *Venables's case*, (in the first year of Charles the first,) in *Cro. Car.* 11, which seems to have been founded on the precedent in *Coke's Entr.* 436, and another case in the 22 Jac. 1. *Officin Brev.* 164.

† See this subject fully discussed by Mr. Justice *Blackstone* in his Reports, in *Gerard's case*, (2 *Bl. Rep.* 1123,) which turned principally on the construction of the statute above alluded to, viz. 2 *Geo.* 3, ch. 20.

‡ No formal *commission* to Mr. Brent, as lieutenant general, appears on the records; nor other act of appointment, but the proclamation of the 11th of April, before stated.

§ See before, p. 140.

seignory in to and over the said province, and the islands thereunto belonging; and you will faithfully serve him as his lieutenant of the said province; and in all other offices committed to your charge you will do equal right and justice to the poor and to the rich within the said province after your cunning wit and power, according to the laws of the province;* you shall delay or deny to no man right and justice; you shall not know of any appempt against his lordship's right and dominion in to and over the said province and the people therein, but you shall resist and oppose it to the utmost of your power, and make the same known with converient speed to his lordship; and you shall in all things faithfully counsel and advise his lordship according to you heart and conscience. So help you God.

In presentia { Capt. CORNWALLIS,
EDWARD PARKER."†

Immediately following this oath and the entry on the record relative to the administration thereof, and of the same date, viz. April 15th, a commission in the name of lord Baltimore, is recorded, appointing "Colonel Francis Trafford, esqr., John Lewger, esqr., William Blount, esqr., Giles Brent, esqr., John Langford, esqr., and James Neale, esqr., to be of our privy council within our said province of Maryland, &c., *ut supra* in commission of council page .".† This evidently refers to the commission of the council of the 5th of September, 1642, before stated,§ in which all of the above named gentlemen, except Giles Brent and James Neale, had been appointed members of the council. Mr. Giles Brent had probably been omitted in the former commission, on account of the office of commander of the isle of Kent being intended for him, to which he was subsequently appointed, (as before stated,) and now made lieutenant general. Mr. James Neale then being the only new member of the council, he was consequently the only member, who was now to qualify by taking the oath of a councillor, it being deemed, as we may suppose, unnecessary for the rest to take the oath again. We can account in this manner only for the mentioning

* This clause seems evidently to relate to his office of *judge*, or chief justice of the province or provincial court, and inserted apparently in lieu of the oath of a *judge* according to the form of that oath as prescribed by the bill.

† "Council Proceedings from 1636 to 1657," p. 99.

‡ The blank above is so in the record.—See "Council Proceedings from 1636 to 1657," p. 100.

§ In note (LI.) at the end of this volume.

CHAPT. on the record Mr. Neale's qualification only; which is in these
 IV. words:—"James Neale had the oath of a councillor of state ad-
 1643. ministered to him by the said Giles Brent according to a form of a
 bill drawn up in assembly, 15th March, 1638," (1639, N. S.) "en-
 titled an act for several oaths." This entry has been before stated
 as a confirmation of the suggestion, that the thirty-six bills of
 the before mentioned session of 1638-9, were deemed laws of
 the province, and as such referred to in the title of the act of
 that session, entitled, "An act ordaining *certain laws* for the go-
 vernment of this province."

Measures
 to repel the
 incursions
 of the In-
 dians.

These matters being thus arranged, and the government thus
 reorganized, as it were, some endeavours on the part of those
 now invested with the administration of the affairs of the pro-
 vince appear to have been exerted for a more effectual check to
 the incursions of the Indians. The "outrages" committed upon
 the colonists seem to have been done principally by the Susque-
 hanocks, who appear to have been the most formidable tribe or
 nation, from whom the colonists had to apprehend mischief. As
 the attacks of this nation was principally on the frontier settlers
 in St. Mary's county, it is probable that their incursions were by
 land, or marauding parties, from their own country on the bor-
 ders of the Susquehanah river to the peninsula between the Pa-
 tuxent and Patowmack; though it is possible, that the territo-
 ries claimed by them might have comprehended all that tract of
 the province lying on the western shore of the Chesapeake
 from the Susquehanah to the Patuxent, bounded on the west by
 the Alleghany mountains; for, if other intervening tribes inha-
 bited any portion of it, they must have been tributary or subject
 to them, as we may infer from the free right of passage through
 the said territory exercised by the Susquehanocks. To put a
 stop to their invasions, captain Cornwaleys was again resorted
 to, as the most proper person to conduct an expedition against
 them. Whatever were the causes of difference between him and
 the late lieutenant general—Calvert, who was now gone to En-
 gland, it is probable that the present lieutenant general—Mr.
 Brent—might deem it prudent to use conciliatory measures with
 the *captain*, (as he was usually called,) and by persuasion induce
 him to exert his influence in providing means for the defence of
 the province. In pursuance of these measures two commissions
 were issued by governor Brent, or at least two appear upon the
 record, to captain Cornwaleys; but, as no date is affixed to the

latter, it is uncertain whether they were both issued on the same day, or on two successive days. As these commissions exhibit the state of the military affairs of the province, and the irresolution which seems to have unfortunately pervaded the minds of those entrusted with the government, as to the proper mode of defence of the province, together with some incidental circumstances, it is thought proper to insert them heré.

CHAPT.
IV.
1643.

“Cecilius, &c., to our trusty captain Thomas Cornwaleys, esqr., greeting; we, relying much upon your known prudence and experience in martial affairs, do hereby appoint and authorise you, to make an expedition against the Susquehanoughes or other Indians, as have committed or aided the late outrages upon the English, at such time and in such manner as you shall think fit; and to take out of every county or hundred within the province the third man able to bear arms, such as you shall think fit to go upon the said expedition; and to require every or any county or hundred, to furnish the said men for such expedition with all necessaries according to the law in that behalf;* to have the said men so ready furnished at such rendezvous at such time as you shall appoint; and the men so levied, and all other volunteers, to command as captain; and with them a war to make upon the Indians aforesaid in such manner and with all such powers and authorities whatsoever for the doing, commanding, or appointing of any thing toward, for, or in the said expedition, and concerning the same, over all persons or goods within the province, or for the vanquishing or spoiling of the enemy, or any other thing touching the said war, to have, use, or exercise the same in as ample manner, power, and effect, to all intents and constructions, as may be had, used, and exercised in time of war by any captain general of an army by the law or use of war; and we require all officers, soldiers, and other persons whatsoever within our said province to obey and respect him the said Thomas Cornwaleys in the nature and quality of captain general of the said expedition for and during the said expedition upon pain of all such punishment as by martial law may be inflicted. Given under our great seal at St. Mary's this 17th of April, 1643. Witness Giles Brent, esqr., our lieutenant general of our said province.”†

* The law, here alluded to, was the act passed at the last session, of the 15th of September, 1642, entitled, “An act for an expedition against the Indians,” before stated, p. 242, the expressions of which are closely pursued in the above commission.

† “Council Proceedings from 1636 to 1657,” p. 101.

CHAPT. In order to enable captain Cornwaleys more effectually to carry
 IV. into execution this intended expedition, in pursuance of the
 1643. foregoing commission, powers were vested by commission, of the same date, in "lieutenant Thomas Baldrige of St. Michael's hundred,"—"requiring him to repair to every house within his hundred, and by the oath of the house-keeper or others whom he should think fit, (which oath authority was hereby given him to administer,) to inquire what number of persons be in every house able to bear arms; what guns fixed or unfixed, what swords or other weapons, what quantity of powder and shot, and of what sort of shot; and to take the deposition of every one in writing with his or her hand or mark thereunto, and to return all such depositions unto the lieutenant general, or Mr. Secretary."* Another commission, of the same tenor and words, appears to have issued on the succeeding day, (April 18th,) to James Neal, for St. Clement's hundred. It is possible, that these two hundreds comprised the frontier settlements of the county; and the inquiry therefore became more particularly necessary as to their state of preparation for defence.

These proceedings appear to have been in pursuance of the measures contemplated by the assembly in such case when they passed the before mentioned act, entitled, "an act for an expedition against the Indians." But it would seem, that this compulsory method of draughting "every third man" was not relished by the planters; or at least that the *captain* preferred the command of an army of "volunteers" to a collection of unwilling soldiers, in whom would probably be found a deficiency of zeal as well as spirit. To gratify this influential commander in his wishes, it would appear, that the other commission to him, before spoken of, was issued, of the following tenor:—

"Cecilius, &c.," (as in the former commission,) "Whereas we are informed of your propenseness to go a march upon the Sesquihanowes, and that several volunteers to a considerable number are willing and desirous to be led out by you upon such a march upon certain conditions treated and agreed between you and them, We, approving very well of such your and their forwardness for the vindication of the honour of God and the christian and the English name, upon these barbarous and inhuman Pagans, do hereby authorize you to levy all such men as shall be willing to go upon the said march, and to lead and conduct

* "Council Proceedings from 1636 to 1657," p. 102. —

them against the Sesquihanowes or other Indian enemies of the province in such time and manner as you shall think fit, and to do all other things requisite for the training of the soldiers, punishing of insolencies and other offences against martial law, vanquishing the enemies, disposing of the spoils, and all other things and matters whatsoever to the said expedition appertaining, in all the same and in as ample manner and powers to all intents and purposes as any captain general of an army may do by the law of war.”*

CHAPT.
IV.
1643.

This scheme of “volunteers” seems, however, to have been scarcely formed before it was relinquished; as may be inferred from the following entry among the proceedings of the council.

“April 18th, 1643.—The lieutenant general and council having taken into consideration the difficulties and almost impossibilities of making a march upon the Indians at this present, upon debate of what is fit to be done for the safety of the colony, instead thereof have thought fit and appointed, that there shall be a company raised of ten choice shott,† with boat, provisions, ammunition, arms, and all things necessary to [be] sent and fortify upon *Palmer’s* island,‡ under such command and according to such instructions and orders as shall be appointed by the lieutenant general * * * is intreated to agree§ with the said soldiers touching their pay and all other conditions during their abiding there in garrison, and to take all things necessary for the arming or providing them at the colony’s charge; and these things are thought necessary to be provided for them, viz. 30 lb. powder, 100 lb. shot, 20 barrels of corn, 1 wherry or shallop, 2 iron pots, 1 pestle, swords or half pikes, and necessary nails to build them a house.

Giles Brent,
John Lewger,
James Neal.”||

Whether this plan of fortifying upon *Palmer’s* island, so as to carry the war, as it were, into the domicile of the Susquehannocks, was ever accomplished, we are not informed; though,

* “Council Proceedings from 1636 to 1657,” p. 012.

† A company of good marksmen, see before 162.

‡ *Palmer’s* island was situated at the mouth of the Susquehanah.

§ The word “is” follows immediately after the word “general” in the record. But something appears to be wanting to make it intelligible. If the lieutenant general was the person who was “instructed to agree,” &c., then the word “who” with a comma inserted after the word “general,” would appear to be the only defect to be supplied. It might possibly, however, refer to captain Cornwallays or some other commander.

|| “Council Proceedings from 1636 to 1657,” p. 103.

CHAPT. from subsequent mention of there being a fort at Susquehanah
 IV. in the next year, we may suppose, that the fort, contemplated
 1643. according to the last preceding document, was erected.—Our records seem here to make a pause, without recognizing any one transaction for the space of three months. A memorandum then appears, dated “July 18th, 1643,” of a “commission of general to captain Cornwaleys, to have and use all necessary and sufficient power for the making of an expedition against the Susquihanowes or any their aiders and confederates, at such time and in such manner as he should think fit, and to levy soldiers, and all other means necessary for the said expedition, *by way of press* according to that law,* and to have, use, and exercise all power and authority for, in, and during the said expedition, as amply and fully to all intents and constructions as any captain general of an army may have, use, or exercise by the law or custom of war.”†

From this it may be inferred that no effectual measures had been prosecuted during the intermediate space of time just mentioned, to put an end to the hostile invasions of the Indians upon the colonists of St. Mary's. On the contrary it appears, that the colony was now harassed not only by the invasions of the Susquehanocks, but by the hostilities of some Indians from the eastern shore of the province. Of what nation or tribe these eastern shore Indians were, it is not mentioned. It had been before stated, that the Nanticokes had been so daring as to cross the bay for the purpose of attacking the settlements in the peninsula of St. Mary's; and they had been included in the declaration of war against the Indians therein mentioned of the 13th of September last; but, by another proclamation of the 26th of January last, a truce with the Nanticokes particularly had been declared. From the following commission, which immediately follows (in the record) the before mentioned memorandum of captain Cornwaleys's commission of the 18th of July, 1643, and which we may therefore suppose to be of the same date, it would appear, that this truce with the Nanticokes had not been productive of its desirable ends; and that the treaty referred to in the

* This seems to allude, either to the *common law* relative to *impressment* or to an act passed at the last session, (of September 5th, 1642,) entitled, “an act providing some things for the better safety of the colony,” whereby the lieutenant general was authorized “to *press* vessels, men, provisions,” &c.—See the act stated before, p. 245.

† “Council Proceedings from 1636 to 1657,” p. 104.

last mentioned proclamation for the truce as about to take place, if ever finally ratified, yet had not been faithfully performed by them.

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IV.
1643.

“Cecilius, &c., to our trusty captain James Cauther, &c., Whereas the eastern shore Indians [have] not yet [made] satisfaction for outrages, &c.* but [are] ready [to commit] new ones if not prevented, &c., [we] authorize you, with such company as you may, to go upon said Indians or aiders or confederates, as shall be found in any suspicious manner upon any part of St. Mary’s neck up to the head of Patuxent river, and them to expel or vanquish and put to death, and their arms or goods to pillage, and thereof to dispose at your discretion, and to pursue them to eastern shore, or thither to go to meet and prevent them, if you may, from coming out upon the English, and to pillage or destroy them, or any other mischief do unto them by [the] law [of] war, until [you] shall obtain peace.”†

As lord Baltimore’s claim to all the western border of the Delaware bay, and the consequent disputes thereon with the proprietaries of Pennsylvania, form an important part of the history of both provinces, there seems to be a necessity for recognizing, in the order of time, all such events as have any relation to those disputes. We have before mentioned the grounds of the claim set up by the English settlers at New Haven to lands on both sides of the Delaware, and their early attempts to establish a colony there, to which hostile resistance was made by both the Dutch and Swedes in the preceding year, 1642. Mr. Lamberton, their agent, as before mentioned, again experienced in the present year, a renewal of the opposition of the Dutch and Swedes, to his projected settlement. It is thus expressed in the minutes of the proceedings of the commissioners for the United New England colonies held, as before mentioned, on the 19th of April, 1653.

Proceed-
ings of the
New Ha-
ven settlers
on the De-
laware.

“In *anno*. 1643, John Johnson, agent for the Dutch at Delaware, conspired with the Swedes against Mr. Lamberton’s life.

*This seems to imply, that “the eastern shore Indians” above mentioned in this commission were the Nanticokes, inasmuch as no late truce or treaty, wherein “satisfaction for outrages” could have been promised, is mentioned to have been held with any other Indians.

† The words in *brackets* above are not in the record; but have been here inserted to make the copy of the commission now on record more intelligible. See “Council Proceedings from 1636 to 1657,” p. 104.—This record book, as well as that entitled, “Assembly Proceedings,” &c., in the council chamber, appear to be but transcripts from originals not now extant, and abound with such errors or omissions as above.

CHAPT. IV. 1643. came uncertain and matter of contention. Hostilities between the respective forces of the king and the parliament had commenced some time in August of the preceding year, 1642. After various battles fought in different parts of the kingdom, the advantages and strength of the respective parties appear to have been, at the close of the present year, (1643,) nearly equal. Each retained the supreme power where their military force was superior. The king had fixed his court at the city of Oxford, and the county around it was remarkable for its loyalty. He had also been particularly successful in the west of England, and the counties of Cornwall and Devonshire were entirely devoted to him. His forces under the command of prince Rupert had, about the latter end of July last, gallantly stormed and taken the city of Bristol. The parliament, however, though somewhat dismayed at these successes, still retained their seat at Westminster, and their assumed power and sovereignty over London and a great portion of England. Even prior to any actual hostilities, (in March, 1642, N. S.) they had commenced the making of *ordinances*, which were to have all the force of laws without the assent of the king. Among these were some which seemed calculated to bear in their effects upon the provincial rights of lord Baltimore. In March, 1643, (N. S.) they made one for sequestering the estates of *delinquents*; by which denomination they affected to distinguish the king's adherents. This iniquitous ordinance was in perfect consonance with those insidious propositions for peace, which they had made to the king in the preceding June (1642,) prior to the commencement of hostilities; in one of which they proposed to him, "that the justice of parliament should pass upon all *delinquents*, whether they be within the kingdom, or fled out of it." As the term *delinquents* was then well known to signify, in their estimation, all the friends of the king,* it was a proposition which, they must have known, honour and every moral principle forbade the king from acceding to. Indeed, to an impartial reader of the events of these times, these propositions seem to have entirely changed the grounds of the dispute between the king and parliament. He was, about the time when they were presented to him, so humbled, that he appears to have been willing to have acceded to any terms short of a total abandonment of his friends. Such humiliating demands, as they contained, must have been pre-

* Rapin's Hist. (Tindal's edit.) vol. 9, p. 225.

sented to him through some sinister designs, with expectation that they should be rejected. Time at length developed, that these designs were not founded in a zeal for civil or political liberty, but were the dictates of an abominable compound of religious fanaticism and political ambition; to gratify which, the established hierarchy of the kingdom was first to be prostrated. In furtherance of this purpose, it was constantly deemed by them an essentially necessary artifice to keep up a perpetual cry against the Papists, and an uniform accusation against the king of his cherishing and protecting them. The king certainly was not a Papist; but it was natural for him or any good man, abandoned as he was by the greater portion of his Protestant subjects, to be unwilling to promote a persecution against those, though Roman Catholics, who manifested fidelity and attachment towards him. Among these we may presume lord Baltimore to have been; for we find him soon after the capitulation of Bristol, as will presently be seen, residing in that city, and in process of time his "practising with the king at Oxford and Bristol against the parliament," was subsequently alleged against him as grounds to deprive him of his province.* This leads us to pay some attention to another *ordinance* of the parliament, passed about this time, bearing date "November 2d, 1643," which as it purports to relate to "all those islands and plantations, inhabited, planted, or belonging to any of his majesty's the king of England's subjects, within the bounds and upon the coasts of America," must have included within its provisions not only the West Indies, but the several colonies also of New England, Virginia, and Maryland. Among other instances wherein the parliament had usurped the acknowledged prerogative of the king, they now resolved to take from him all superintendence over the colonies, particularly his power of appointing therein governors and other officers.† Although it would appear from the preamble to this ordinance of November, that it was intended as a shield to the New England colonies, and resulted from some petition before presented by them to the parliament, yet from the

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1643.

An ordinance of parliament relative to the colonies.

* Hazard's Collections, vol. 1, p. 624.

† They had also undertaken to legislate in favour of New England, in the first part of the present year, by an ordinance, bearing date, "10 March, 1642," (which was then the 20th of March, 1643, N. S.) exempting those plantations from paying any custom, subsidy, taxation, or other duty for either their exports or imports. See this ordinance at large in Hutchinson's Hist. of Massachusetts, vol. 1, p. 110.

CHAPT. generality of its terms it might have been converted into a sword
 IV. to be waved *in terrorem* over Virginia and Maryland, which
 1648. colonies had not yet acknowledged their exclusive jurisdiction or power. It appointed the earl of Warwick, governor in chief, and lord high admiral of the American colonies; with a council of five peers and twelve commoners to assist him.* It empowered him, in conjunction with his associates, or any four of them, “to provide for, order and dispose all things which they shall from time to time find most fit and advantageous to the well governing, securing, strengthening, and preserving of the said plantations; and chiefly to the preservation and advancement of *the true Protestant religion* amongst the said planters, inhabitants; and the further enlargement and spreading of the gospel of Christ, amongst those that yet remain there in great and miserable blindness and ignorance.” This seemed to augur no good to either the “ungodly Virginians” or papistical Marylanders. “It further authorised the commissioners to nominate, appoint, and constitute all such subordinate governors, councillors, commanders, officers and agents, *as they shall judge to be best affected*, and most fit and serviceable for the said islands and plantations; and to remove any of the said subordinate governors, councillors, commanders, officers, or agents, and in their place to appoint such other officers as they shall judge fit. And it is hereby ordained, that no subordinate governors, councillors, commanders, officers, agents, planters or inhabitants whatsoever, that are now resident in or upon the same islands or plantations, shall admit or receive any other new governors, &c. but such as shall be allowed and approved of under the hands and seals of the aforementioned commissioners, or any six of them. And it is hereby further ordained, that the said chief governor and commissioners, or the greater number of them may assign, ratify, and confirm so much of the aforementioned authority and power, in such manner and to such persons, as they shall judge to be fit, for the better governing and preserving of the said plantations and islands, from open violence, and private disturbance

* This council seems to have been in the nature of a joint committee from the two houses. Robert Rich, earl of Warwick, had been appointed by the parliament commander of the fleet, contrary to the inclination of the king, in March, 1648, and as soon as a new great seal was made by the authority of the parliament, in November, same year, (about the time of this first ordinance,) he received a patent creating him lord high admiral of England.—Rapin's Hist. (Tindal's edit.) vol. 9, p. 500, and vol. 10, p. 241.

and distractions.” This ordinance is here stated more at large, inasmuch as it seems to have been intended to form the first stepping stone, as it were, to the subjugation of both Virginia and Maryland to the present power of the parliament and subsequent supremacy of Cromwell, who was one of the before mentioned commissioners under this ordinance.*

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It has been seen, that soon after the arrival of Mr. Leonard Calvert in England, the lord proprietary had deemed it proper to send new instructions or orders to governor Brent, which, although they confirmed the appointment of Mr. Brent as governor, yet restricted him from the exercise of some powers, which would otherwise have been incidental to his office, such as assenting to any laws to be made by a general assembly, and of granting lands. As these restrictions, if of long continuance, would necessarily have been productive of much inconvenience to the inhabitants of the province, his lordship very properly recalled them by new orders or instructions. It is, indeed, to be inferred from both the preceding and subsequent orders relative to these restrictions, that they would not have been imposed, but in contemplation in the first place of his lordship's visiting his province in person, and in the next of the speedy return of Mr. Leonard Calvert to his station as governor. These second orders on this subject are of the following tenor:—"Mr. Brent,—Whereas not long since, when I did conceive that my brother Leonard Calvert would have dispatched his affairs here, so as he might have returned into Maryland again this year, I did, for divers reasons, by a dispatch which I then sent unto you, restrain your power of assenting unto any laws in my name, and of granting any land from me in that province, I have now, upon confidence of your integrity and fidelity to me, thought fit, and I do hereby give you full power and authority to assent from time to time in my name to any law which at any general assembly of the freemen of that province shall be thought fit by you, to be enacted there, in as ample manner as my said brother had power from me to do the same, while he was my lieutenant general there, and no otherwise, that is to say, and my true meaning is hereby to give you power to make every such law, so to be assented to by you in my name, to be in force within the said

New instructions from the lord proprietary to governor Brent.

* See this ordinance at large in *Hazard's Collections*, vol. 1, p. 533; which appears to be the same as that abridged (taken from *Hughes's Abridgment*,) in the same vol. p. 633.

CHAPT. province till I or my heirs shall signify our or their disassent
 IV. thereunto under our or their hands and seals or otherwise within
 1643. the said province, and no longer; and I do also give you the
 same power and authority during your government there, under or
 until I or my heirs shall signify our or their pleasure to the con-
 trary, to grant lands from time to time in my name within the
 said province, under my great seal there unto any adventurers or
 planters there, and upon the same terms and conditions as my
 said brother had power from me to do at the time of his trans-
 mitting and entrusting the government of that province unto you;
 for all which this shall be your sufficient warrant. Given under
 my hand and seal at arms at Bristol, the 18th day of November,
 Anno Domini, 1643.

“To GILES BRENT, esq., my } C. BALTIMORE.”*
 lieutenant general of my }
 province of Maryland.” }

With these instructions his lordship sent also a separate order to Mr. Brent for the appointment of Mr. Thomas Gerard to be one of his council within the province. His reasons for so doing are thus stated in the preamble to the order.—“Whereas I have received good testimony from my brother Leonard Calvert of the good affection and fidelity of Thomas Gerard of St. Clement’s hundred† in the province of Maryland, gent., towards me and my service in the said province, and that he hath deserved very well of me in his diligent endeavours for the advancement and prosperity of my colony there, wherein he hath had occasion to express also *more than ordinary abilities of understanding*,‡ such as may make him capable and useful in advising with upon the most important affairs of that place.”

It has been before observed, that the lord proprietary had *reserved* at this time, “for his own particular use,” several farms, or a manor or manors including several farms within St. Mary’s county; that these were cultivated at his own private expense, and for his own private profit and emolument, under the superintendence of an agent or agents for that particular purpose.

* “Council Proceedings from 1636 to 1657,” p. 112.

† Mr. Gerard was at this time lord of St. Clement’s manor within St. Clement’s hundred in St. Mary’s county. See before, p. 167.

‡ The arrival of Thomas Gerard, “surgeon,” in the year 1638, into the province, is noted in the oldest Record Book.—Being of one of the learned professions he probably had received a “more than ordinary” education also, in addition to his “abilities of understanding.”

With the orders just before stated, he now sent a commission to governor Brent and several other commissioners therein mentioned, styling them "commissioners for his treasury in Maryland," with instructions thereto annexed, both of the same date, as to time and place, as the before mentioned orders, "for the well ordering and disposal from time to time of his stock or stocks of neat or other cattle, and of all other his goods and chattels there, and also of all rents, fines, confiscations, or escheats, tributes or other gifts from the Indians, customs or subsidies granted to him by any general assembly, and all other profits and emoluments belonging to him within the said province; and for the better managing, clearing, letting such farm or farms, manor or manors, or other lands *set out and designed there for his particular use*, according to such directions and instructions as he should from time to time send thither for the purpose."* From the words and expressions of his lordship in other parts of this commission and the instructions, it may be inferred, that he had then some presentiment in his mind, derived perhaps from "the extremity of the present troubles in England," as he expresses himself, that his property in America stood in a very precarious situation. His design in directing, as he did in his instructions, that inventory should be made of all his goods and chattels whatsoever belonging to him within the province, was most probably with an expectation, that, if the parliament's commissioners, under the before mentioned ordinance of November 2d, should deprive him of the government of his province, as was subsequently done, he might possibly still be allowed to retain what was his own *private* property.

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1643.

The succeeding year opened with no pleasing prospect of a flourishing state of the province. The dissensions of the colonists, whether derived from the then unhappy and distracted state of the mother country, or from their own peculiar situation in respect to the hostilities of the Indians, had prevented them from paying the necessary attention to their plantations and the cultivation of their staple of trade during the preceding year. While more tobacco was grown in the province than was necessary to reimburse the English merchants for the goods and merchandize with which they supplied the colonists, the exportation of that staple might, as it regarded the interests of the province

1644.
Embar-
rassed
state of the
trade of the
province.

* The above mentioned commission and instructions are inserted at large in note (LIII.) at the end of this volume.

CHAPT. only, be very properly allowed to be made to other countries
 IV. than the parent state. Hence, as before mentioned, the colo-

1644. nists appear to have been in the usage and practice of exporting some of their tobacco to Holland or the Dutch provinces ; for, we can draw no other inference from the two several acts of assembly, passed at the two preceding sessions, entitled, "an act for the support of government,"—whereby five per cent. on all tobacco exported to other countries than England, Ireland or Virginia, was given to the lord proprietary. But uneasiness seems to have now existed in the province, at least with those entrusted with the government of it, lest the whole of the slender crops of tobacco throughout the colony, of the last year's growth, would not be adequate to the necessary shipments of the present year to England. Proclamation was therefore issued by the lieutenant general, bearing date January 8th, 1643, (1644, N. S.) for the regulation of the exportation of tobacco ; which, as it exhibits the state of the trade of the province at this time may with propriety be here inserted.—"By the lieutenant general.—Whereas, by reason of the unreasonableness of this last past year, small quantities of tobacco have been made within this colony, whereby the ships bound hither out of England for supply of the colony are like to want of their home freight, for provision for their benefit in that point, in as far as the tobacco of this colony's growth will amount, I have thought fit and do hereby prohibit all export of tobacco out of this province after the publication hereof in the several counties respectively by or upon any other vessel or vessels whatsoever, other than ship or ships coming from England, until the said ship or ships be fully freighted ; and for better caution for due observance hereof I do hereby prohibit any person to lay or take on board any tobacco, under any pretence whatsoever, on any vessel (other than such ship or ships as aforesaid, or such as shall belong to some inhabitant of the country,) till he or they have put in security not to offend to the contrary hereof."*

Ingle's rebellion.

The next important subject, which appears to have occupied the attention of the provincial government, at this time arose from certain plots and machinations of one Richard Ingle, now lately arrived in the province, which appear to have been now first commenced by him, with a view, as subsequent events shew, to deprive the lord Baltimore of all right to the *government*, if not

* " Council Proceedings from 1636 to 1657," p. 110.

to the *proprietaryship*, of his province. Whatever his designs now were, the provincial government had thought it fit, though perhaps improperly at this period of time, to institute the charge of "high treason to his majesty" against him; and in pursuance thereof had caused a proclamation or proclamations to be issued, for arresting his person and seizing his ship. They were of the following tenor:—

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IV.
1644.

"20th January, 1643.

"Proclamation against Richard Ingle.

"I do hereby require, in his majesty's name, Richard Ingle, mariner, to yield his body to Robert Ellyson sheriff of this county, before the first day of February next, to answer to such crimes of treason, as on his majesty's behalf shall be objected against him, upon his utmost peril of the law in that behalf; and I do further require all persons, that can say or disclose any matter of treason against the said Richard Ingle to inform his lordship's attorney of it at some time before the said court to the end it may be then and there prosecuted. G. BRENT."

It would appear from the following document, that he was actually arrested agreeably to the above proclamation, and that measures were thereupon immediately taken for seizing his ship.

"By the lieutenant general.—These are to publish and proclaim to all persons, as well seamen as others, that Richard Ingle, master of his ship, is arrested upon high treason to his majesty; and therefore to require all persons to be aiding and assisting to his lordship's officers in the seizing of his ship, and not to offer any resistance or contempt hereunto, nor be any otherwise aiding or assisting to the said Richard Ingle upon peril of high treason to his majesty."*

We may remark upon these proceedings, although this was only the commencement of this business, that the provincial government was undertaking in this affair a more important exercise of power than the royal authority itself in England would have ventured upon. Not long after the commencement of the civil war, and about the latter end of the year 1642, the king,

* "Council Proceedings from 1636 to 1657," p. 111.—I have ventured here to transpose the order of these two proclamations different from what they are in upon the record, where the latter, for seizing his ship, is placed before the former for arresting his person. The expressions of that for seizing his ship make mention of his being *then* arrested, and therefore could not precede that for arresting his person. The clerk, who recorded these state papers, must have misplaced them through mistake. The proclamation for seizing the ship has no date in the record.

CHAPT. injudicious as he generally was in the choice of occasions for the
 IV. strict exercise of his powers, and a little elated perhaps with his
 1644. then late successes in several battles, directed that some prisoners of war, who had been notorious in their acts of rebellion, should be indicted and tried for high treason on the statute of 25 *Edw.* 3. They were accordingly tried and condemned to death. But before their sentences were carried into execution, the parliament having notice thereof immediately issued a declaration, that "all such indictments and proceedings thereon were unjust and illegal ; and that if any man was executed or suffered hurt, for any thing he had done by their order, the like punishment should be inflicted, by death or otherwise, upon such prisoners as were, or should be, taken by their forces."—This declaration saved the lives of the condemned, the king not thinking it proper to expose his officers to the same fate.* Whether the crime of "high treason to his majesty," for which Ingle was at this time arrested, consisted in overt acts done within the province or in England, or of what nature those overt acts were, it does not appear. If the arrest was merely for treason committed in England by siding with the parliamentarians, the proceeding was certainly impolitic, if not unjust. But if the treason was committed within the province by exciting the inhabitants thereof to throw off their allegiance to the king, and to acknowledge the authority of the parliament only, it must be acknowledged to have been a justifiable struggle in the lord proprietary's friends to preserve his lordship's palatinate jurisdiction over the province, through the preservation also of the royal sovereignty. Be this as it may, however, it is said, that from this arrest captain Ingle made his escape.†

* Lord Clarendon's Hist. (fol. edit.) pp. 266, 648.—Rapin's Hist. (Tindal's edit.) vol. x. p. 135.

† Bacon's Laws, *Preface*.—This seizure of Ingle's ship, to which was added, that the government of Maryland "tampered with the seamen thereof, to carry her for Bristol, which was then in the king's hands," are mentioned in a paper, dated in 1656, (taken from Thurloe's State Papers, and inserted in Hazard's Collections, vol. i. p. 622, entitled, "Objections and Reasons, why the government of Maryland should not be put into lord Baltimore's hands,") as evidence "of the dissatisfaction and *malignancy* of the said lord Baltimore and his governors from time to time against the parliament and their interest."—But, if Ingle's rebellion, as it is called, was an association with Clayborne to aid and assist him in the recovery of the isle of Kent, claimed by the latter, (as it is said to have been ; see *Bacon's Preface* ;) it goes far to justify governor Brent in the seizure both of his person and ship, which would then in such case have amounted rather to an honest defence of lord Baltimore's property, than evidence of "malignancy against the parliament and their interest."

Cotemporary with these disturbances hostilities between the Indians and colonists still continued. What rendered this warfare now more terrible to the inhabitants was, that the Indians had by some means furnished themselves with fire arms, and had adopted the use of them. From a proclamation, issued by the governor on the second of January this year, to prohibit any person within the colony of St. Mary's from landing or delivering, upon any pretence whatsoever, any gun-powder or shot to any Indian without a license to that purpose, it is to be inferred, that some of the colonists themselves had been so wicked or incautious as to have assisted the savages with the means of this their new mode of warfare. It is equally as probable, however, if not more so, that the Susquehanocks, who were now the most formidable Indians, whom the Marylanders had to encounter, were in the habit of procuring fire-arms and ammunition, either immediately from the French, Dutch, or Swedes, settled on the American continent, or intermediately through the agency of the Iroquois or other Indian nations. It seems to be asserted upon good authority, that in the year 1642 the Iroquois carried on a considerable commerce with the Dutch at New Netherlands to whom they disposed of their peltry, and *who*, in return, furnished them with fire arms.* And in a pamphlet, published in the year 1648, (an extract from which is stated in Smith's History of New Jersey, and in Proud's History of Pennsylvania,†) it is said, "that the Dutch in New Netherland endanger all his majesty's adjoining countries, most wickedly, feloniously, and traitorously, contrary to the marine and admiral laws of all christians, selling by wholesale, guns, powder, shot and ammunition to the Indians, and instructing them in the use of our fights and arms;—likewise, the Swedes, hiring out three of their soldiers to the *Susquehanocks*, have taught them the use of our arms and fights."‡ The time of the publication of this pamphlet would probably bring the occurrence of these facts back to the present date. Some idea of the disagreeable situation, in which the frontier settlers of St. Mary's at present were, may be derived from a proclamation issued by governor Brent on the 4th of May this year; in which he "authorises the inhabitants upon Patux-

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Hostilities
with the
Indians.

* Holmes's Annals, vol. i. p. 325, cites Wynne, vol. i. p. 308.

† Vol. i. p. 111.

‡ The Dutch, it seems, were the first, who furnished and taught the negroes in Africa the use of fire-arms, which they used against the Europeans. *Mod. Univ. Hist.* vol. xiv. p. 36, note.

CHAPT. ent river, (being they are so far from other plantations, and so
 IV. weakly peopled, and continually exposed thereby to danger and
 1644. outrage from the Indians as well friends as enemies, by whom
 they received an assault to their very near cutting off one of
 their plantations last year, besides the eminent losses they have
 otherwise received,) that upon approach of any Indian whatso-
 ever unto them in the woods, their plantations or houses, they
 may (after having bid the said Indian depart, and declared that
 if they do not depart they will shoot them,) shoot them whatso-
 ever Indians they are; which bidding them depart I do enjoin
 the inhabitants unto, in case the Indians shall be of our friends,
 until the 25th of May next, in which time all the said Indian
 friends shall have notice not to approach the said plantations,
 and after the said 25th of May I do license the said inhabitants
 to shoot and kill any Indians, coming about their woods, planta-
 tions, or dwellings, without the foresaid warning given. Wit-
 ness my hand. GILES BRENT."

"The same authority I do give them against any Indians upon
 the water between the back river of Patuxent and the mouth of
 Patuxent river."*

It is probable, that in consequence of these rigid proceedings
 against even the friendly Indians, those of Patuxent, who had
 most commonly been distinguished for their amicable disposition
 to the "new comers" even on their first landing, entered into
 some compromise with the provincial government, so as to ob-
 tain some security from the dangers to which they were exposed
 in consequence of the foregoing proclamation. For, in about a
 month afterwards, a protection or "pass" under the great seal was
 issued by the governor, bearing date the 8th of June, 1644, de-
 claring, "that the bearer hereof, Peter Mimascave, alias Nicoat-
 men, an Indian of Patuxent, and all other Indians of that town
 and nation are within our protection, peace and amity, to be
 treated and used with all humanity as our friends and confede-
 rates, until they shall give cause to the contrary; and therefore
 we do hereby require all and every of you, (inhabitants of the
 county of St. Mary's,) upon the utmost peril that may be by law
 inflicted upon the transgressors hereof, that you commit not any
 hostile act or outrage upon him the said Peter or any other of
 his town and nation, unless it be such as shall put you in fear of
 your lives by repairing to any of your houses or plantations in

* "Council Proceedings from 1636 to 1657," p. 120.

numbers lurking or other suspicious manner, without shewing or holding forth this or some other instrument or pass under our great seal, but that you suffer him and them quietly to pass and repass to or from the houses of our lieutenant general and council or any of them, according to the full intent and effect of this our safe-conduct.”* CHAPT.
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In about ten days after the above declaration in favour of the Patuxent Indians, some proceedings took place relative to a treaty expected to be held with the Susquehanocks at the English fort or garrison at Piscattoway; which proceedings, as they are not only interesting in themselves, in giving us a better view, than we have yet had, of the affairs of the colony in relation to the several Indian tribes, friends as well as enemies, but also subsequently productive of a serious dispute between governor Brent and secretary Lewger, require to be more particularly stated here than they would otherwise merit. Although there is no express authority to say, that at the time when these proceedings took place, governor Brent was absent from the seat of government, yet from his subsequent disapprobation of them, we must presume, that at the time when Mr. Secretary Lewger issued the commission and instructions for the occasion, the governor was not at the city of St. Mary's, from whence those documents most probably emanated, so as to give the secretary an opportunity of consulting his excellency before his discharge of his official duty as secretary in issuing those government acts. It is possible, that the governor might then have been on a visit to the isle of Kent, at his manor of Kent Fort, or indeed in Virginia. But this supposition is rendered somewhat uncertain, inasmuch as there does not appear on the records any written authority for the conduct of the secretary, or indeed for the administration of the government at all, in such case of absence, as might have been expected and had heretofore been practiced.† Be this as it may, Mr. Lewger receiving information, that the Susquehanocks were expected at Piscataway, either with serious intentions of entering into a cessation of hostilities, or with

Treaty
with the
Susque-
hanocks
proposed
by Mr.
Lewger.

*“Council Proceedings from 1636 to 1657,” p. 121.

† In a preceding part of the same record book, p. 110, appears the following entry:—“7th Febr’y, 1643. The lieutenant general authorised John Lewger, secretary, to issue and sign ordinary process, and *in the absence of the lieutenant general* from St. Mary's, to hear and determine any civil cause with liberty of appeal to either party.”—This seems to imply, that about that time, (according to new style, the 17th of February, 1644,) more than four months preceding this transaction, the governor meant to be absent from the seat of government.

CHAPT. sinister designs of inveigling the friendly Indians of Piscata-
 IV. way into a confederacy with them, issued, in the name of the
 1644. lieutenant general, a commission to captain Henry Fleete, bearing date the 18th of June, 1644, of the following tenor:—

“Cecilius, &c., to captain Henry Fleete, gent., greeting.—Whereas by certain intelligence from Piscattoway I understand, that there are some number of our enemies the Susquihanowes expected about this time at Piscattoway under colour to treat and conclude a peace with them and us,* but perhaps to confederate and unite all the Indians of these parts in some general league or plot for the cutting off the English in Maryland, as they have most savagely attempted in Virginia;† and because it concerns much the honour and safety of the colony to have some English there to be present at the treaty and other proceedings, to direct and over-rule it if need be, to countenance and strengthen our friends that yet remain, and terrify the others, and to proceed with the Susquehanowe agents either in hostility or truce as there shall be most cause and reason for either; I, relying much upon your skill in the Indian language, and long conversation and experience in the Indian affairs, and your prudent and provident circumspection otherwise, have made choice of you,‡ and do hereby will and require you, all delays and excuses set apart, to take up with you a convenient strength of English, well armed and provided, to the number of twenty at least, and with them to repair to Piscattoway and there to proceed with the Indians both friends and enemies according to such instructions as shall be delivered to you by my secretary, bearing date herewith, and (during your said voyage,) to lead, order, and command in

* From this it is to be inferred, that the Susquehanocks were at this time at war not only with the Maryland colonists, but with such Indians as were friendly to them, particularly those at Piscattoway. It has been before mentioned, that the Susquehanocks were in the habit of making war upon the Yoamacoes at St. Mary's before the arrival of the first Maryland colonists. It is probable, that they had constantly kept up this warfare ever since with all the Indians seated in the peninsula between the Patuxent and Patowmack; which circumstance seems to confirm what was stated in the introductory part of this work,—that the Powhatan confederacy included the Indians between the Patuxent and Patowmack.

† This must allude to the massacre planned and in part executed by Opechanough, as before mentioned, p. 161.

‡ It will be recollected, that Captain Henry Fleete was found by governor Calvert and his colonists among the Indians at Piscataway, when the colonists first arrived in the Patowmack in the year 1634, as before mentioned, (chap. I.) and where it appeared that he had resided several years before in great esteem with the natives.

chief all the said company, as shall go along with you, by yourself, or officers, to be by you appointed in all points, and to all effects, yea even to the inflicting of death, (if necessity shall so require,) upon mutinous or disobedient persons, as a captain general may do by the discipline or law martial; and I do hereby require all inhabitants and other persons of our said province, and especially the company as shall go along with you, to respect, aid, and obey you, (as there shall be occasion,) in the quality of such chief captain and commander as aforesaid, upon peril of the utmost penalties as by martial law may be inflicted. Given at St. Mary's this 18th June, 1644.—Witness,

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GILES BRENT, esqr.”

“*Instructions* to captain Henry Fleete, to which his commission bearing date herewith relates.

“1. You are to go up with your company to Piscataway, and there to consider by the best means you may, what hope there is of a real and firm peace or truce with the Susquehanowes, and whether it will be more to the honour, safety, or advantage of the English to have war or truce with them at this present.

“2. If you find the most and best reasons to persuade to peace, you may enter into treaty of peace with them, and undertake to them in our name a truce or cessation of all acts of hostility on our part, until such time as you shall agree upon for expectance of performance of conditions on their parts, and of the governor's assent to a peace, and give such hostage or hostages in exchange as shall be willing to go with them, if you should find it convenient.

“The *conditions* to be demanded and stood upon by you, (so much and so long as you shall think fit,) for this cessation are to be

“1. For hostage, or such other security as you shall think best, that they shall not do any act of hostility upon us or our confederates, (such as you shall think fit to include, wherein the *Patowmacks* not to be forgotten,*) nor shall come within the territories of us or our confederates according to such bounds

* As governor Calvert, on his first arrival in the Patowmack, (1634,) and ascending the same is said to have been received in a very friendly manner by some Indians at their town called Patowmack-town, (as before mentioned, chap. I.) and that this town was on the Virginia side of that river at a place now called *New Marlborough*, we may infer, that “the Patowmacks” above mentioned were a tribe of Indians of that place, and, although resident in Virginia, were in friendship and alliance with the Maryland colony. They must have been the same tribe as those denominated the *Patowmeks* in Smith's Hist. of Virginia.

CHAPT. as you shall agree upon during this cessation, unless it be two
 IV. or three messengers repairing hither for public treaty, and carry-
 1644. ing the safe conduct under his lordship's seal, which you may
 deliver to them to that end.

"2. For satisfaction for their plundering of Mr. Angne and of Mattapanian house twice;* wherein especially to require a return of all the arms taken at those times or of other to that number.

"3. For restoring as much as you can get of the arms and other goods lost or left in our last march upon them, at least the two field pieces.†

"4. For some present to the governor, or any other conditions as you shall think fit for the honour, safety, and advantage of the colony or our confederates, and namely the Virginians.

"5. The better to endear our peace to them, you may insinuate to them, how the hostages of both sides will quickly become interpreters between us and them, and then our men will be willing to come and live among them, and to aid them against their enemies as now we do the Piscataway's, &c.

"6. If you shall not think best to treat or truce with them, you are to use all lawful and discreet means you can to pillage or take them, or (if it shall seem best) to kill them, and to break off all league and treaty between them and our confederates, and especially such as you shall note most bold and active that way, from leaguings or treating with the common enemy, afore or against our liking or consent, and the Piscataways without the authority or consent of their queen residing here.‡

* "Mattapanian house" here spoken of was most probably the same as that alluded to by *Oldmixon*, in his *Brit. Emp. in Amer.* vol. I, p. 199.—"Mattapany in this country" (St. Mary's county,) "is noted only for having been the lord Baltimore's seat, when he dwelt in this country. Here he built a handsome house, though more for convenience than magnificence; it stands near the mouth of the river Patuxent."

† From this it would appear, that our colonists had been defeated in some battle with the Indians not long before this; though no mention of such defeat or battle appears upon our records; at least, that I have been able to ascertain.

‡ The last sentence of this paragraph is a little obscure, but the meaning seems to be—that he should endeavour to hinder any league or treaty between the Susquehanocks and Piscataways without his assent or that of the *queen* of the latter tribe, who, as it would seem, was then resident at St. Mary's.—Female monarchy was common among the Indians. In *Beverly's Hist. of Virg.* p. 199, mention is made of two instances thereof then (about the year 1709,) existing on the eastern shore of Virginia, to wit, the queen of a tribe at a town called *Pungoteague*, and an empress at *Nanduye*, who, as he says, had all the nations of the eastern shore of Virginia under tribute.

“7. Lastly, in all matters of importance which shall concern the execution of your commission, or of these instructions, in matters left to your discretion; you are to advise with Thomas Gerard and James Neale, esqrs. and councillors of the province, Thomas Greene and Cuthbert Fenwick, esqrs., Thomas Baldridge, Nathaniel Pope, and John Rice, planters, or two of them, whereof the said Thomas Gerard to be one and the said James Neale to be another, if they or either of them be there to be advised with. Signed, JOHN LEWGER.”

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1644.

The “safe conduct under his lordship’s seal” mentioned in the first of the preceding conditions, appears to be subjoined to them on the records, as follows:—

“Cecilius, &c., to all inhabitants of the province, &c., I do hereby signify and declare unto you, that I have promised and undertaken to the Indian bearer or bearers hereof of the Susquehanough nation, not exceeding three in number and repairing in good manner from the Susquehanough fort* to any lieutenant general or some of my council at Kent or Saint Mary’s, upon any public treaty or message, safe and free passage to and fro through my province, without any molestation or harm of the English; and therefore I require all and every of you upon sight hereof not to do any thing to the violating of the said public faith given unto them, upon the utmost peril of such punishment as by martial law may be inflicted upon the contemners. Given at St. Mary’s this 18th June, 1644. Witness Giles Brent, &c.”†

Whether captain Fleete went to Piscattaway in pursuance of his commission and instructions, or whether any treaty was held or entered into with the Susquehanocks at this time, we are nowhere positively informed. The conduct of Mr. Lewger in issuing this commission and these instructions, (if we suppose the absence of the governor,) seems to us at this day liable to no imputation of extraordinary impropriety. Some slight excess of his powers, we might suppose, would have been overlooked on such an occasion, had not some circumstances attended the transaction, which enhanced its impropriety, but of which circumstances we have no information. It is with surprise, there-

Disagree-
ment of
governor
Brent
thereto.

* It is probable, that the fort at Susquehanah here mentioned was the fortification erected on Palmer’s island at the mouth of the Susquehanah, in pursuance of the orders before stated, p. 259, dated April 18th, 1643.

† These documents relative to this contemplated treaty at Piscattaway are in “Council Proceedings from 1636 to 1657,” p. 121–125.

CHAPT. fore, that we learn, that in about two months afterwards go-
 IV. vernor Brent appears to have entertained the highest indignation
 1644. at this assumption of power by Mr. Lewger.—It is thus expressed on the records:—"Whereas John Lewger, esq., one of his lordship's council of this province of Maryland, hath, without any order or authority derived from his lordship the lord proprietary or his lieutenant general, presumed of his own hand to counterfeit and deliver unto captain Henry Fleete a commission for treating a peace with the enemies of this province the Susquehanowes, and likewise for the making the said Fleete a captain or general to make war against them or other Indians, and to exercise authority over his company—inhabitants of this province, and to do other acts according to the tenor of the said commission; unto which said commission he hath likewise presumed to affix and counterfeit his lordship's great seal and his lieutenant's hand, which acts being of high misdemeanor and offence, and such as require severe animadversion; These are, therefore, to suspend the said John Lewger from the said office and dignity of councillor, and from all other offices and dignities thereupon depending; and I do further hereby revoke all other commissions at any time granted unto him the said John Lewger by me, as his lordship's lieutenant general, for granting out writs, or exercising any other power of judicature within his lordship's province. GILES BRENT."

"Declared by the lieutenant general the 26th of August, 1644."

On the same day a commission appears to have issued to "William Brainthwayte, esqr., commander of our county of St. Mary's, Thomas Greene, gent., and Cuthbert Fenwick, gent.," appointing them "commissioners for our county of St. Mary's, to hear and determine all civil causes, and likewise all criminal causes, not extending to life or member, arising or pleadable by the law of this province before the commander and commissioners of a county."—Which commission we may suppose to have been issued principally for the purpose of substituting others in the place of Mr. Lewger in a new commission for the justices of the county court.*

Governor
Calvert re-
turns from
England

These differences between governor Brent and Mr. Lewger appear to have been quickly absorbed in more important transactions, and we learn no more of them. In about a week or two

* See these proceedings of the 26th of August, in "Council Proceedings from 1636 to 1657," p. 125-6.

afterwards Mr. Leonard Calvert returned from England to his station of governor of Maryland. He brought with him new commissions from the lord proprietary in England for the administration of the government of his province, one for himself as governor or lieutenant general, another for the appointment of his council, and a third for Mr. Lewger re-appointing him secretary of the province, judge of all causes testamentary and matrimonial, attorney general, and register of the land office, besides that of councillor, he being included in that commission also. This re-appointment of Mr. Lewger must have been made in England by the lord proprietary previous to his knowledge of the supposed misconduct, for which he was now suspended; but we shall see him again, after the storm of Clayborne's attack on the province had blown over, in the exercise of his former office of secretary, as we may suppose, in virtue of this last commission.—The commission for the governor purports to have been—"Given under the great seal of the province at the fort of St. Mary's on the eighteenth day of September, 1644." But, as before observed on the former commission, it must have been drawn up in England, under the immediate inspection of the lord proprietary, and, according to his lordship's command inserted in the body of it, "proclaimed and published within the province at the places accustomed to proclaim and publish any his edicts and ordinances;" to which proclamation or publication the last mentioned date must refer. As this commission contained an express revocation of all preceding commissions to any lieutenant general, and those for the council and secretary superseded former commissions also for those offices, it became necessary for them to be proclaimed and published as speedily as might be after the governor's arrival. Hence we may infer, that his return into the province must have been between the 26th of August and the 18th of September following. His new commission was in form the same as that in 1642, and nearly so in substance. A few of the most important variances between them may be remarked here, as they seem to indicate the opinions of the lord proprietary, and perhaps those of the statesmen of that day on whose judgment he might have reposed, as to his legislative powers over his province. In the clause of the former commission of 1642, where he authorised his lieutenant general to call assemblies of the freemen of the province for the enacting of laws and to give his assent to such as should be en-

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1644.
with new
commis-
sions.

Some few
variances
between
the new
commis-
sion and
the former.

CHAPT. acted by them, a proviso was inserted, that "every law so to be
 IV. assented unto by him the said lieutenant should be in force till
 1644. we or our heirs should signify our or their disassent thereunto under our or their hand and seal, and no longer, unless after the transmission thereof unto us or our heirs and due consideration had thereupon we or our heirs shall think fit to confirm the same under our or their hand and seal."*—The meaning of which, though a little obscurely expressed, seems to be, that the lord proprietary should reserve to himself the right of abrogating at any time any act of assembly by his express "disassent" thereto, notwithstanding his lieutenant general in the province had previously given his assent to it, unless his lordship should give his express *confirmation* of such law under his hand and seal; after which, it would seem, that the law would be binding on himself.—In the similar clause or paragraph of the present commission of 1644, now newly arrived, the proviso contained greater restrictions on the lieutenant, as to the laws to which he was authorised to give his assent.—"Provided, that every one of the said laws so to be enacted and assented unto in our name be made to continue in force till we or our heirs shall signify our disassent thereto, under our or their hand and seal, and *not to continue in force only for any other limited time*, as till the next ensuing general assembly thereafter the making thereof, or for any certain number of years, as divers laws heretofore have been made there, which causes a great deal of uncertainty and produces many ill effects in the government there; Provided also, that our said lieutenant do not in our name enact or assent unto *any law for the constitution, confirmation, alteration or change of any officer* or officers within the said province, or which may any way infringe or prejudice any of our rights, prerogatives, or royal jurisdictions over or in the said province granted unto us and our heirs by the letters patent above mentioned; every which law, so to be assented unto, and enacted by him our said lieutenant general there in our name, and consented unto and approved of by the said freemen or their deputies or the major part of them in such manner as aforesaid we do hereby declare shall be in force within the said province until we or our heirs signifying our or their disassent thereunto under our or their hand and seal and no longer, unless after the transmission thereof

* See the clause more at large in the commission of 1642, before referred to and inserted in note (LI.) at the end of this volume.

unto us or our heirs and due consideration had thereupon we or our heirs shall think fit to confirm the same under our or their hand and seal."—By these restrictions the governor seems to have been prohibited from assenting to any act of assembly, which was made to continue only for a limited time, as *until the next session*, or for any certain *number of years* expressed therein. This artifice in legislation, so much practised in modern days by the free and independent states of America, we perceive, was not unknown in the early periods of colonization. It results from the principle of "checks and balances" so highly prized in the legislative powers of government as arranged in the several constitutions of America and borrowed from that of England. Each distinct body of men, vested with the powers of legislation, is fond to gratify the natural passion of the human heart and to retain power to its latest breath. The contests between the senate and house of delegates of the state of Maryland for the retention of power and control in permitting the longer existence or continuance of a law, have in a variety of instances operated most perniciously on the happiness, as well as prosperity of the people. When a law was *temporary*, and the time of its expiration arrived, either body had a power by its negative to withhold its assent for its longer continuance; but if its duration was indefinite, both must consent to its *repeal*. It was, without doubt, to guard against this inconvenient "check" upon the lord proprietary, resorted to by our provincial legislature, that his lordship so strenuously opposed this mode of legislation. If the lieutenant general of the province, through the means of the proprietary influence, or his own, should fortunately obtain the passage of a law favourable to the interest of the proprietary, and the law was *permanent*, that is, without limitation, the assembly could never afterwards obtain its repeal without the assent of the governor or lord proprietary; but if the act was *temporary* and made to continue only for a definite time, the assembly could, at the expiration of that time, refuse its assent to its further continuance, and the law would cease to exist. It is probable also, that the provincial legislature had passed some law or laws, which his lordship thought, had affected his "rights, prerogatives, and royal jurisdictions" over his province, particularly in the *creation or alteration of offices*. If the principles of the English parliamentarians had been by this time even partially imported into the province, as we may justly suppose

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CHAPT. they were, his lordship had much cause indeed of apprehension
 IV. on this ground; for, the long parliament had now assumed en-
 1644. tirely to themselves, the right, not only of creating offices, but
 of appointing officers to fill them in all cases. It is not proba-
 ble, that, in the spirit of the times, the prerogative rights of a
 lesser baron, such as lord Baltimore, would be more regarded
 than those of the king. In justice to the provincial legislature,
 however, it ought to be observed, that by the law of England,
 the *creation of offices* could be done only by a statute enacted for
 the purpose, or at least that the king could not create any new
 office with any new *fees* annexed to it, or annex new fees to an
 old office; for that, it was held, would be imposing a tax upon the
 people without consent of parliament; though the *appointment*
of officers to fill offices already created, most certainly appertain-
 ed to the king, and such properly, it might be said, ought to
 have been the law of Maryland. But lord Baltimore's charter
 went beyond the English constitution in this respect; for, by
 the seventh section of that instrument, power was given to him
 "to constitute and ordain judges, justices, magistrates, and offi-
 cers, of what kind, for what cause, and with what power soever,
 within that land" (Maryland) "and the sea of those parts, and in
 such form as to the said now baron of Baltimore, or his heirs,
 shall seem most fitting." It must be acknowledged, that this
 was a very extensive power, and might very justly create a wish
 in the provincial legislature to impose some limits to it. That
 they should have had the power of giving or withholding their
 assent to the "constitution" or creation of an office was reason-
 able, had the charter so allowed; but if they presumed to "alter
 or change," not *offices*, but *officers*, they certainly gave to the
 lord proprietary just cause of complaint.

Another important variance between the commission of 1642
 and the present one, consisted in a clause therein containing
 additional instructions to the lieutenant general relative to grants
 of lands. By this clause one of the *conditions* previous to ob-
 taining a *grant* of land, was, "to take the oath of fidelity to the
 lord proprietor;" which condition does not appear to have been
 ever before prescribed, and became subsequently one of the os-
 tensible causes of much contest and bloodshed in the province.

The new commission for the *council*, concomitant with the
 foregoing for the lieutenant general, was almost literally the
 same as the former of 1642, (to which the record refers,) except

in the names of the gentlemen who were now appointed to form the governor's council. They were—"Giles Brent, John Lewger, Thomas Greene, Thomas Gerard, and James Neale, esqrs." Colonel Francis Trafford, Thomas Cornwaleys, William Blount, and John Langford, esqrs., who, together with Mr. Lewger, formed the former council under the former commission, either had left the province or were omitted in the new appointment for some cause not now known.

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Mr. Lewger's commission also, constituting and appointing him to the several offices of secretary of the province, judge of causes testamentary, attorney general, and register of the land office, appears to be nearly the same as his former commission of 1642. As he subsequently appears again in the execution of his office of secretary, we may suppose that Mr. Brent's accusation against him was not deemed by governor Calvert to be very well founded, or that Mr. Lewger was a man of that utility to the lord proprietary, that his services at this critical period of the provincial affairs could not be dispensed with.*

Governor Calvert, it appears, had not much time to repose himself at St. Mary's, after his voyage across the Atlantic. Some causes, possibly approaching symptoms of the rebellion to the lord Baltimore's authority over his province, which shortly succeeded, obliged him to be absent from his government, most probably on a visit to Virginia. But it does not appear, that he was at this time constrained to fly to Virginia from hostilities carried on within the province, for they had not commenced; but his visit there might have been with intentions, either to come to some eclaircissement with Clayborne or to apply to the government of Virginia, which was still opposed to the parliamentarians, for its interference in behalf of his province. In contemplation, most probably, of this visit to Virginia, on the thirtieth of September, "by virtue of his commission," he "nominated and deputed his well beloved cousin William Brainthwayte, esq., to be lieutenant general, admiral, chancellor, keeper of the great seal, chief captain, magistrate, and *commander of the said province* during his absence." From which last expression we may infer, that his absence from St. Mary's was not occasioned by a visit to the isle of Kent, that being *within the province*.†

Perturbed
state of the
colony.

* These commissions are inserted at large in note (LIV.) at the end of this volume.

† "Council Proceedings from 1636 to 1657," p. 138.

CHAPT. In the mean time further measures were taken to guard
 IV. against the hostilities of the Indians, by proclamation, (dated
 1644. the 13th of November, 1644,) "prohibiting any inhabitant of
 the province from lending, selling, or bartering any arms or am-
 munition whatsoever unto any Indians within this province,
 without leave first had from the governor of the province for the
 time being; and to authorise any inhabitant of this province,
 who shall meet with any Indian within this province, (without
 the said license,) having with him ammunition, to take the same
 from him, and to deliver the same to the governor for the time
 being; and likewise to prohibit all the said inhabitants of this
 province to entertain or receive into their houses, (without the
 aforesaid license,) any Indians whatsoever.*"

Attempt to
 call an as-
 sembly.

Governor Calvert could not have been absent from the seat of
 government above ten days or a fortnight; for, on the sixteenth
 of November, (1644,) pressed perhaps by the difficulties of his
 situation and the perilous state of the province, he issued his
 proclamation at St. Mary's, for holding a general assembly, and
 summoning all freemen inhabiting within the province to be at
 the said assembly, either by themselves, or their proxies or bur-
 gesses, to consult and advise, &c. at St. Mary's, on Tuesday,
 the 3d of December following. The secretary was also thereby
 authorised, (in case of the governor's absence from St. Mary's
 on the said 3d of December,) to prorogue it to such further day
 as he should think fit. Duplicates of this proclamation were
 issued to St. Clement's hundred, and to St. Michael's, as also to
 the isle of Kent. Special writs also, as heretofore used on simi-
 lar occasions, issued to Thomas Gerard, James Neale, Thomas
 Greene, Giles Brent, and William Brainthwayte, esqrs., to attend
 in person; the four first of whom were also of the council, as
 before stated. What was the result thereof we are not informed;
 for, no record appears of their meeting, proceedings, or proro-
 gation in pursuance of the above mentioned authority.†

Clayborne
 repossess-
 es himself
 of the isle
 of Kent.

Our documents now fail us for the remainder of the present
 year, except a commission with certain "instructions in writing
 given by the governor to two officers and a party of men sent
 by him to visit the isle of Kent, and which, from the order in
 which they are placed on the records, though without any date

* "Council Proceedings from 1636 to 1657," p. 138.

† See "Assembly Proceedings from 1637 to 1658," p. 305; and Bacon's Laws,
sub anno 1644.

annexed to them, appear to have taken place at some time between the middle of November of this year, (1644,) and the first of January next succeeding. The commission was to Mark Pheypo and John Genalles,* “authorizing them to take the command of eight men and a shallop, and to press to fill up that number, and to employ them in service at the isle of Kent according to instructions.” The “instructions” annexed to this commission were:—

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“1. You are, with all the speed you may, to repair with your company to the isle of Kent, and if wind and weather permit, after you are past Patuxent river, to make over for the east side of the bay, and to keep that side to Popler’s island, in such secret manner as you may, to keep your shallop from being discerned at Kent.

“2. At Popler’s island to stay until night, discovering beforehand if any vessel be riding against the southern part of Kent, and if there be any thereabouts, or in any other part, to keep out of command of all vessels, and to make for some plantation further up the island where you shall have reason to think it will be fitted to put ashore both for safety and intelligence, and not to go on shore at Kent point or thereabouts, until you have had information of the state of the island from some weaker plantation as afore.†

“3. To inquire whether captain Clayborne, or any other, have made any disturbance of the peace, or committed any outrage upon the island, and to learn what force he did it with, and what strength he is of there at sea or shore, and what his intents further be, and how long he means to stay.

† In the margin of the record book, opposite to this commission, it is thus inserted,—“*Vacat P. Aliam* to Mark Pheypo and John Genalles.” Whether this means, that the commission was directed to both *jointly* or to either *conditionally*, or that this commission had been *vacated* by *another* subsequent commission, is not easy to determine.

* There is inserted in the record book, in the margin opposite to this *second* article of the instructions, the following entry, which appears to have been intended as a part of the instructions, though not easily intelligible:—“*Vacant P. Alias*, to go upon the west shore over against *Comin’s* plantation 4 *Ande’a*. to hollow at house and surprise some one and bring him away.”—It may be remarked, that Kent fort was situated on the southern part of the island at or near to the first harbour or creek on the left hand in going up what is called the Eastern bay after passing Kent point also on the left. From the caution given to avoid this part of the island, it may be inferred, that captain Clayborne or his party were, at the time of these instructions, in possession of that fort.

CHAPT. "4. To deliver my letter to C. Brent,* and bring an answer
IV. if you may."†

1644.

As somewhat explanatory of the foregoing commission and instructions, may be here inserted also a short memorandum immediately succeeding them in the record book, as follows:—

"January 1st. Proclamation to be published upon the isle of Kent to prohibit trade, till ships have been at St. Mary's, &c., and to declare captain William Clayborne, esqr., and Richard Thompson, planter, to be enemies of the province, and to prohibit all intelligence or correspondence with them or agents at peril, &c. &c. as per file."

On the same day, January 1st, a commission appears to have issued to captain William Brainthwayte, esqr., "to be commander of Kent with all authority civil and criminal, which heretofore to any commander hath belonged, and in absence to depute such person as he shall think fit, and John Wyat, Robert Vaughan, gent., John Abbott, William Cox, commissioners."‡

We thus see, that Mr. Clayborne had now renewed his claim to the isle of Kent, and had again resorted to open military force. He had, without doubt, been induced to embrace this period of time for that purpose from the promising prospect of success, which the declining state of the royal power in England, and consequently that of the lord Baltimore and the Catholic party, now held out to him. After the unfortunate battle on Marston Moor, near York in England, (which had occurred on the second of July last, 1644,) whereby the whole of the north of England was won from the king, the friends of the parliament began to assume a bolder tone, and to consider the king's cause as in a gradual progress to destruction.§ The estates of those, who took part with the king, (as lord Baltimore appears to have done

* Although it is written in the record "C. Brent," as above, yet as Mr. Giles Brent was owner of the "manor of Kent fort," and possibly now resident there or some where on the island; it is probable that the letter C. may have been erroneously written instead of the letter G., and the message to have been directed to him; or it may have been meant to designate his title,—*Captain* Brent.

† "Council Proceedings from 1636 to 1657," p. 139.

‡ "Council Proceedings from 1636 to 1657," p. 140.—By "commissioners" was meant justices of the peace. In such times of suspicion, governor Calvert might have fixed upon Mr. Brainthwayte as commander, on account of his being a relative of the *Calvert* family, as appears from other documents.

§ The *independent* party, headed by Oliver Cromwell, began now (towards the end of the year 1644,) to separate from the Presbyterians, and Oliver began to form those designs, which he afterwards so successfully executed. Lord *Clarendon's* Hist. (fol. edit.) p. 421.

in the early part of the civil war,*) were considered by them as liable to confiscation or sequestration, wherever the fortune of war should enable them to do so ;†—too often the ungenerous conduct of successful revolutionists or rebels, as the case may eventuate, in most civil wars towards the conquered party, even towards innocent persons who know not how to act on such occasions. Whether Mr. Clayborne had been in England, and had taken a part on the side of the parliament, or whether he had not been for some years a constant resident in Virginia, and had now availed himself of some discontents within the province of Maryland, originating perhaps with Puritans who had been permitted to settle in the province, we have no information. We have seen him before, immediately on the dissolution of the old charters of Virginia and the change thereof from a proprietary to a royal government, placed in the conspicuous stations of councillor and secretary of that province. He had also, in the year 1642, experienced the king's favour in appointing him to the office of "king's treasurer within the dominion of Virginia *during his life.*"‡ We may therefore consider him as having been for some years past an inhabitant of Virginia, agreeably to the duties of his office, but now, for interested purposes he had forsaken his king and benefactor, and arranged himself under the banners of the parliament. It is not impossible, but that he acted also under the ordinance of parliament, of November, 1643, before stated,§ whereby the superintendence of the colonies was vested in the earl of Warwick with a council of five peers and twelve commoners, who were authorised "to nominate, appoint, and constitute all such subordinate governors, councillors, commanders, officers and agents, as they shall judge *to be best affected*, and most fit and serviceable for the said plantations, and to remove others."—Interest has a powerful bias upon the affections, and they might therefore with confidence count upon Mr. Clayborne as their faithful servant. In his efforts to regain his possession of the isle of Kent, success seems to have attended him, and moreover, indeed, his party appear for a while to have

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1645.

* See the allegation before stated, (p. 265,) of his joining the king at Oxford and Bristol.

† See the Ordinances of March, 1643, before stated, p. 264.

‡ This appointment is inserted in Hazard's Collections, vol. i. p. 493, as extracted from Rymer, vol. xx. p. 541, A. D. 1642 ;—as follows :—"Rex, sexto die *Aprilis*, concedit *Willielmo Claiborne* Armigers, *Officium Thesaurarii Regis in-fra Dominium de Virginia durante vita.* P. S."

§ See before, p. 264.

CHAPT. been so victorious as to have possessed themselves also of the
 IV. government of the colony at St. Mary's, to which he had never,
 1645. as yet, set up any pretence of claim. It is probable, however, that captain Richard Ingle, who had been arrested at St. Mary's for treason, as before stated, but had escaped, and who, it is said, associated himself on this occasion with Mr. Clayborne,* acting under some higher authority, perhaps under a commission from the earl of Warwick's board of commissioners just mentioned, returned to St. Mary's, full fraught with revenge, and driving Mr. Calvert from his station, who fled to Virginia, placed himself in the seat of power. But the minutia of these transactions, or proceedings, which took place during what is called Ingle's and Clayborne's rebellion, are now covered in obscurity. At the close of their power, and the restoration of the authority of lord Baltimore, towards the end of the year 1646, they carried with them or destroyed, on their departure from St. Mary's, most of the records and public papers of the province.† A slight recognition, however, still remains of the holding a session of assembly at St. Mary's on the 11th of February, 1644, (1645, N. S.) prior to Ingle's or Clayborne's possession of that part of the province; but no journal of the proceedings of that session appears, nor how nor when summoned for that purpose. It may, perhaps, be supposed, for nothing is to be found contradictory to it, that this session was held in virtue of a prorogation or adjournment of the assembly called in the preceding November, as before mentioned. Be that as it may, one law only appears to have been enacted; if more, they are now lost. It is entitled, "an act for the defence of the province," and appears to have been made for the purpose of enabling the governor "to settle a garrison at Piscattoway," and to lay an assessment upon the inhabitants of the province to defray, not only the charge of such garrison, but that "of the late expedition to Kent;" from which last expression we are to infer, that an "expedition" or attempt had been made before this session, to subdue the rebellion in the isle of Kent, besides that of the exploring party under Mark Pheypo or John Genalles, before mentioned, but which proved unsuccessful.‡

* Bacon's Preface to his Collection of the Laws of Maryland.

† "Assembly Proceedings from 1637 to 1658," p. 425, and Bacon's Preface, note (d.)

‡ As this act, "for the defence of the province," exhibits the impoverished state of the province at this time, and the scanty means it possessed for supporting a military force, it is inserted at large at the end of this volume in note (LV.)

Connected with this a singular proceeding appears to have been adopted by the governor or executive branch of the provincial government for the support of the garrison at Piscattoway ; which, although it occurred nearly a month prior to this session in February, ought not to be passed unnoticed. A commission was issued by the governor, bearing date, January 9th, 1644, directed "to Thomas Weston of St. George's Hundred," authorizing him to assemble all the freemen of that hundred for the purpose of assessing upon that hundred only the charge of a soldier, who had been sent by that hundred to serve in the garrison at Piscattoway.*

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1645.

Although the curiosity of every native citizen of the state of Maryland, might perhaps be excited to know something of the little civil war, which now prevailed in his native province at this early period of its existence, in the commotions of which some worthy ancestor of his might perhaps have borne an anxious part ; yet the loss of the records before mentioned, one of the consequences thereof, has rendered all authentic documents relative thereto for ever irrecoverable ; and it appears, that the muse of history has not thought the subject of sufficient importance to inspire the pen of any cotemporary historian.

* " Council Proceedings from 1636 to 1657," p. 141.

CHAPTER V.

Captain Hill elected governor, in the absence of governor Calvert—Governor Calvert returns to St. Mary's with a small army—Hill resigns upon terms—Governor Calvert convenes the assembly before called by Hill—The first instance on the records of the province of the distinction between the upper and lower houses of assembly—Proceedings of the assembly—An embargo and martial law proclaimed—The "acts for customs" on imports and exports enforced—The English ordinance of 1646-7, relative to customs on goods exported to the plantations, and the first English excise law—The isle of Kent submits, and the government thereof is settled—Governor Calvert's death and character—Thomas Greene, esqr., his successor—Mr. Hill renews his claims upon the province—Corn (private property,) *pressed*, or seized, for the use of the garrison of St. Inigoe's fort—War with the Indians of Nanticoke and Wicomoco—Cautious proceedings to regulate the return of the disaffected—The exportation of corn and horses prohibited—The administratrix of Governor Calvert adjudged to be his lordship's *attorney in fact*, as governor Calvert had been—An assembly called—They meet—Their proceedings—Proclamation of a general pardon—The provincial court adjourned, and proclamation thereof made—Affairs of England having relation to Maryland—Governor Greene removed and governor Stone appointed in his stead—Strictures on his commission—A new oath prescribed to the governor—A new commission of the council—Mr. Hatton sent in as secretary—A new great seal—Office of muster-master general instituted—A new commission also for the commander of the isle of Kent—Sixteen laws sent in, with a commission for propounding them to the assembly—New conditions of plantation—Quarrel between governor Greene and the commander of the isle of Kent—Question, as to the right of forfeitures for treason, accruing within a manor—Affairs of the mother country in relation to Maryland—Session of assembly—Remarks on the acts of this session—The act concerning religion—The letter of the assembly to the lord proprietary—His lordship's reply—The first settlement of the Puritans at Providence, now Annapolis—New conditions of plantation, and grants of land—Mr. Greene appointed governor in the absence of governor Stone—Charles, the second, proclaimed king—Governor Stone returns, and convenes the assembly—Their proceedings—The acts of this session—The governor visits Providence, and organizes it into a county called Ann Arundel—The commanders of the isle of Kent and Ann Arundel authorised to grant warrants for land therein—King Charles the second, appoints a new governor of Maryland—The appointment of Mr. Gibbons, of New England, to be one of the council—An assembly called—The ordinance of parliament of 1650—The colony at Providence refuses to send delegates to the assembly—His lordship's message on this subject—Sir William Berkeley's attempt to fix a settlement on Palmer's island—Lord Baltimore's directions for remedying the loss of the records—and for civilizing the Indians—New directions for settling the province—Mr. Mitchell removed from the council—A law against the spreading of false news, proposed by his lordship—Proceedings in England for the "reducement" of the colonines—In-

structions to commissioners for the reducement of Virginia—The commissioners sail on their expedition—Captain Curtis arrives in Virginia, which is reduced—He, with the other commissioners, proceeds to Maryland, which submits.

After a lapse of about eighteen months, during which period our provincial records afford no trace of any of the intermediate transactions, we find governor Calvert in Virginia; whither, without doubt, he had retreated from the hostilities of the parliamentary party within his province headed by Ingle, and perhaps Clayborne.

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1646.
Captain Hill elected governor in the absence of governor Calvert.

A commission, it seems, was issued, during this absence of governor Calvert, to captain Edward Hill, “deputing and appointing him governor of the province of Maryland;” which, from the tenor and conclusion of it, to wit, “Given under my hand and seal this 30th day of July, 1646, in *Virginia*.—Leonard Calvert,”—purported to have been the governor’s “own act;” but, from subsequent circumstances it appears, that the grant of this commission to Mr. Hill was “acted by another person,” (as the record expresses it,) that is, was made out by the council at St. Mary’s who elected the said captain Hill to the office of governor, in the absence of governor Calvert, while he was “in *Virginia*.”

The preamble to this commission to Mr. Hill thus states the authority, on which governor Calvert was enabled in such a case to create a deputy in his office of governor.—“Whereas by a commission from the right honourable Cecilius lord proprietary of the province of Maryland to me Leonard Calvert, esqr., bearing date the 18th of September, 1644, I am authorised, *in case of my absence out of the said province*, to appoint such an able person as I shall think fit to be his lordship’s governor of his said vince, and whereas at this present I have occasion, for his lordship’s service, *to be absent out of the said province*, I do depute and appoint captain Edward Hill to be governor of the said province;”—“And I do further authorise the said captain Edward Hill to take and receive into his possession and custody, for his lordship’s use and his heirs, all stocks of cattle, rents of lands, profits of customs, escheats, fines, forfeitures and confiscations, by any way and at any time due unto his lordship within his said province of Maryland, and the one half thereof, (excepting of stocks of cattle,) I do hereby authorise the said captain Edward Hill, (as a reward for his service to his said lordship,) to apply to his proper use and benefit during the time of his government

CHAP. V. of the said province, and also for all stocks of cattle belonging
 1646. to his lordship there, to be accomptable to me for his lordship's use and his heirs, whenever I shall demand the same, and until his lordship shall otherwise appoint."* Whether this commission was the governor's "own act," or not, yet it seems to intimate, that his restoration to the office of governor was considered, at this time, as a doubtful incident, and that the best mode of securing the private property of lord Baltimore within the province was to delegate his powers of government to some friend, in whom he might confide, and who either then resided, or would be allowed to reside, at St. Mary's. But, it appears from a clause in one of captain Hill's letters hereafter inserted, that some members of the council, still remaining at St. Mary's, thought they could with propriety, in the absence of governor Calvert, elect and appoint captain Hill to be governor, and did so, under the plea of an "absolute necessity for the safety of the province," and, as it would seem, under the last clause of his lordship's commission for the government before referred to, which provided, that "in case our said lieutenant shall happen to die, or *be absent out of our said province*, and shall fail to make choice of, nominate, and appoint some person to be our lieutenant, &c., we do hereby grant unto our councillors there for the time being, or the greater part of them, full power and authority from time to time in every such case to nominate, elect, and appoint such an able person, *which shall then be of our council there*, and inhabiting and residing within our said province, &c., to be our lieutenant," &c.† Whether Hill was, previous to this election and appointment, an inhabitant or resident within the province of Maryland, some doubt may be entertained from the tenor of his letters hereafter stated; but, it seems certain, that he was not "one of the council," and, therefore, could not be legally elected or appointed governor under the above clause. This subject will be resumed in its proper place.

The lord proprietary, in England, seems to have been fully informed in due time by his brother of the situation of his affairs in Maryland, or at least of the necessity, which his brother had been under of quitting his province. Considering, perhaps, the proprietaryship of his province as lost to him, but desirous and expecting to retain what private property he had in America,

* "Council Proceedings from 1636 to 1657," p. 142.

† See governor Calvert's commission of 1644, before referred to in p. 286, and inserted in note (LIV.)

particularly such rents and debts as were due to him, he executed and sent a warrant of attorney "to his brother Leonard Calvert, esqr., and to his trusty and well beloved John Lewger, esqr., his secretary for his province, and to whom they two should appoint, to demand and receive, and, if need be, to sue for, implead, and recover, for his use, all rents, arrears of rents, profits, debts, and other dues whatsoever, which belonged unto him, either in Virginia or Maryland, and to dispose thereof as he should from time to time direct; and in default of such directions according to their best discretions for his most advantage; and to give acquittance in his name and behalf for what they should receive from time to time by virtue of this warrant. Given under his hand and seal at *Stook*, this 15th of November, *anno domini*, 1646."*

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1646.

The place called *Stook*, from whence his lordship dates this power of attorney, was most probably some obscure place in England, to which he had retired; for, at this time no royalist, especially a Catholic, could openly appear in any part of England, if he had been known at any time to have taken side with the king. It may be remembered, that the last intelligence we had of his lordship's residence, was at the city of Bristol, after it had been stormed and captured by the king's forces in July, 1643, and from whence he dated his instructions before mentioned of the 18th of November, 1643; but that city had since been surrendered to the parliament forces, in September, 1645; and we may suppose his lordship to have been, in consequence thereof, under the necessity of seeking some other asylum. The decisive battle of *Naseby* had been fought, in June, 1645, where the king's forces had been entirely routed. Sir Thomas Fairfax had now made a complete conquest of the two loyal counties in the West Devonshire and Cornwall, and had driven the prince of Wales to take refuge in France. The king had given himself up to the Scotch army, and the venerable marquis of Worcester, above eighty years of age, had the honour of surrendering, in July, of the present year, the last remaining fortress of royalty in Great Britain—his castle of *Ragland* in Monmouthshire. Whether lord Baltimore had now also submitted to the parliament, and taken the covenant-oath, or lurked unknown in some obscure place, as above suggested, we have no documents to authorise us in determining.

* "Council Proceedings from 1636 to 1657," p. 143.

CHAP. V. Governor Calvert, it seems, did not retreat into Virginia with an intention of passively resigning his government to the insurgents of his province. As sir William Berkeley, the governor of Virginia, had found means to retain that province in the obedience of the king, and held out against the parliamentarians long after the mother country had submitted to them, governor Calvert was enabled, in his retreat to that colony, to organise a military force sufficient to regain that part of his province, which was at and contiguous to St. Mary's. Towards the close of this year, therefore, he returned to St. Mary's with a body of "soldiers" or armed men, but to what number we are not informed. With this little army he seems to have taken the rebels by surprise;* and, after some little military skirmish, for, it appears that some blood was shed, most of them submitted, some were arrested and imprisoned, and some fled to Virginia. From an expression in governor Greene's letter to Sir William Berkeley hereafter stated, to wit, "I would not willingly this colony should be further imbrued in the effusion of blood,"—it is to be inferred, that there must have been some *battle* or fighting between the inhabitants of the province on the occasion of this insurrection; but, whether such fighting was previous to governor Calvert's quitting his province, or when he returned to regain possession of it, we are no where certainly informed. We have ventured to suppose, that it was on his return.

Hill resigns upon terms. Mr. Hill, the pretended governor, was, on "this invasion," as he calls it, of governor Calvert, obliged to give up his office; but, this was done, as it would appear, upon "conditions mutually subscribed to by them;" which conditions were, as may be inferred from Hill's letters,—a payment of or compensation for all arrears of perquisites granted to him by the before mentioned commission in the name of governor Calvert. Mr. Hill appears upon this to have retired to Virginia, where we shall leave him for the present.

Governor Calvert convenes the assembly before called by Hill. An assembly of the province, it seems, had, during the government of Mr. Hill, been called by him, had met, and had passed some laws, (not now extant,) but had been adjourned before governor Calvert regained the government. Mr. Calvert, probably supposing that no "new summons to the inhabitants," or proclamation for that purpose, were necessary, convened the

* See the letter of the assembly, of April 21st, 1649, to the lord proprietary hercafter inserted.

same assembly again, which so stood adjourned without issuing any "new summons" or proclamation; which circumstance is here mentioned, principally on account of its giving rise to subsequent objections, as will hereafter be seen, to the validity or legality of the acts passed at this session; inasmuch as the assembly could not be lawfully called by Mr. Hill, who was not lawfully a governor. It seems also extraordinary and unaccountable to us at this day, how governor Calvert could have reposed confidence enough in the same assembly, called by captain Hill, to have induced him to trust the same members with the legislation of the province; especially, if the circumstance be true, as stated by a subsequent assembly of 1649, in their letter to the lord proprietary, that this "whole house of commons," as they call this assembly of 1646-7, "(two or three only excepted,) consisted of that rebelled party and governor Calvert's professed enemies." However ill or well disposed this assembly might have been towards lord Baltimore's government, they were reassembled and met again under the authority of governor Calvert, on the 29th of December, 1646, O. S., which was, according to the computation of the rest of Europe, now new style, the 8th or 9th of January, 1647.

It is peculiarly remarkable, that, notwithstanding the turbulence of the times, it is at this session of assembly, we discern the *first notice*, taken on the records, of the distinction, which was subsequently adopted and used, between the *upper* and *lower* houses of assembly, and the form practised of sending for the *lower* house to attend the governor in the *upper*, to hear his speech to them, in the manner of an English legislative body.—It is thus entered on the journal.—"In the upper house present, the governor, Mr. Lewger, Mr. Greene.—The burgesses being sent for and all appearing, the governor declares to them, that they were called hither as freemen to treat and advise in assembly touching all matters, as freely and boldly, without any awe or fear, and with the same liberty, as at any assembly they might have done heretofore, and that they were now free from all restraint of their persons, and should be free during the assembly, saving only to himself, after the end of the assembly, such charge as he had or hath against any for any crime committed since the last general pardon."*

The first instance on the records of the province, of a distinction between the *upper* and *lower* houses of Assembly. 1647.

* It may be proper to state, that although the fact of sending for the burgesses to come to the *upper house*, leaves the inference, that the assembly was at this

CHAP. V. Immediately after this speech of the governor and on the same day, a singular proceeding appears to have taken place in the assembly, relative to the terms on which the "soldiers," who attended the governor from Virginia, had embarked with him for the purpose of reinstating him in his province. Several persons were sworn as witnesses, who "testified, that the governor, afore their coming up out of Virginia, declared to all the soldiers in public, and to these deponents in particular, in these words or to this effect:—that they were to attend him upon these terms, viz. that if he found the inhabitants of St. Mary's had accepted his pardon for their former rebellion, and were in obedience to his lordship, *the soldiers were to expect no pillage there*, but he would receive the inhabitants in peace, and only take aid from them to the reducement of Kent."—This does not necessarily imply, that governor Calvert's soldiers were to be allowed to "pillage" and plunder the inhabitants in rebellion, as they pleased. It might mean only, that the property of the rebels, being enemies, captured in war, should be divided and distributed among the soldiers. But, even in a literal sense of "pillage," the warfare of the most civilized nations in Europe, at this period of time, particularly throughout the war, called the thirty years war, from 1618 to 1648, was constantly attended with a license to the soldiery to plunder; and during the civil war of England, in consequence of this general usage, scarcely a city or a fortress was surrendered by either party, but plunder and pillage were practised by the conquerors.*—It does not appear, however, from any documents extant, that governor Calvert's soldiers committed any "pillage" upon the rebels on their regaining the province; but, on the contrary, seem to have expected their compensation out of his lordship's private property.

The house or houses of assembly continued to sit and adjourn from day to day until the second of January, when it finally adjourned to the first of March following; but no meeting of this assembly appears to have taken place in pursuance of this last adjournment. Only two acts are mentioned to have been passed

session divided into two houses or branches, and actually set in two distinct apartments, yet no express mention thereof appears on the records of this session.

* When the town of Colchester in Essex was surrendered, after long resistance by the nobility and gentry, who had defended it for the king, in the year 1648, the barbarous generals *Fairfax* and *Ireton*, particularly the latter who dictated, exacted ten thousand pounds from the innocent inhabitants, *to preserve them from plunder*. Rapin's Hist. of Eng. (Tindal's edit.) vol. x. p. 477.—See our remarks on this subject before, p. 164-5, note.

at this session : One entitled, "an act for customs," and another entitled, "an act touching judicature." But, as no copies of these acts are now extant, we have to suppose, that the former, relative to customs, was similar to some acts before made on the same subject, and before stated, to wit, the 13th section of the act of 1638-9, ch. 2, and the 36th bill of the same session, entitled, "an act for a custom on certain tobaccos," which gave five per cent. to the lord proprietary on all tobaccos exported, except to England, Ireland or Virginia. But, from the preamble to a subsequent act—1661, ch. 6, made expressly to repeal this act of 1646-7, relative to customs, it appears to have contained an additional clause, (not in the former acts,) wherein his lordship, "in consideration of the custom therein granted to him, *undertook the whole charge of the government, both in war and peace.*"—The other act, relative to judicature, might possibly be similar to the former act of 1642, ch. 4, entitled, "an act for the rule of judicature," before stated, but from a subsequent act of 1650, ch. 6, it appears to have related also to the regulation of sheriff's fees.*

The next proceeding of the provincial government, which occurs after this session, was an embargo :—dictated as the proclamation purports, by the civil commotions of the province, and the continued hostile state of the isle of Kent. As the proclamation for this measure cannot well be condensed into a much shorter space and the material passages thereof be preserved, it is here presented entire to the reader.—"By his lordship's lieutenant and governor of Maryland.—Upon certain reasons known unto myself requiring an embargo to be laid at this present upon all persons and vessels, to the end no intelligence may be communicated, or practice entertained with foreigners *during this time of war*, I do hereby forbid all persons now being in the

An embargo, and martial law proclaimed

* See these acts, under their several dates, stated in *Bacon's Laws*; but, although Mr. Bacon has said, in a note to the titles which he gives to the acts passed at this session of 1646-7, that "no other traces of the acts or proceedings of this session appear upon record, that he could discover," yet he must have meant, that no copies of these, or any other acts, of this session, appear upon record, or he must have inadvertently, (contrary to his usual accuracy,) passed over what is stated above of the *proceedings* of this session, taken from the record book in the council chamber, entitled "Assembly Proceedings from 1637 to 1658," p. 307.—We shall see also, that, at the next session of assembly held in January, 1647-8, a protest was entered by the assembly against the validity of the acts of this session, "conceiving that they were not lawfully enacted, for that no summons issued out to the inhabitants, whereby their appearance was required by lawful authority."

CHAP. V. county of St. Mary's, that they presume not to go, or attempt
 1647. to go, out of the county of St. Mary's without acquainting me first therewith, and my leave so to do; and that no person entertain any communication, or give any entertainment to any one coming into the province or from the isle of Kent; but that, immediately after the knowledge of any arrival of any person or vessel coming into the county of St. Mary's, they give notice thereof to me as soon as may be, and warn all persons so arriving to come to the fort to me before they entertain any communications with any person of the province. This proclamation to be in force in every hundred immediately after the publishing thereof in the hundred, and to continue in force for one month from the date of it, and all men after the publication to take notice of it and observe it in every point so far as it shall concern them, upon pain of death or such other censures as the offence shall deserve, in the judgment of a *martial court*, assuring all persons, that I intend to take a very strict accompt of all offences to the contrary hereof.—Given at St. Inigoe's Fort, this 16th of January, 1646.”*

The act for
 customs on
 imports
 and ex-
 ports en-
 forced.

At or about the time of issuing this proclamation, a vessel belonging to Mr. Ralph Beane arrived within the hundred of St. Clement's or New-town, in St. Mary's county, from Virginia, laden with wine and other spirituous liquors, and Mr. Beane had sold some of those liquors to the inhabitants of those hundreds, who came on board of his vessel for that purpose according to the then usual practice. This appears to have been contrary to the before mentioned act of the last session, entitled, “an act for customs,” which it seems must have laid a duty as well upon *imports* as *exports*. The governor, therefore, issued his commission, bearing date the 19th of January, 1646, (1647, N. S.) to Mr. William Britton to make inquiry into this business, and, if

* See this proclamation in the record book entitled, “Council Proceedings from 1636 to 1657,” p. 145: where a note is subjoined thereto as follows:—“Renewed for one month on the 12th of February, 1646, especially prohibiting export of cattle or corn.”—St. Inigoe's fort appears to have been situated about three or four miles to the south eastward from the site of the city of St. Mary's, (probably where St. Inigoe's ware house now stands,) and being then the most secure fortress on that part of the province, the governor had fixed his residence there, and had there held the last assembly. This part of the province appears to have been kept in subjection at this time by military power, for the purpose of supporting a due administration of the laws and government of the lord proprietary. The “exercise of martial law, in case of rebellion, sudden tumult, or sedition,” was authorised by the thirteenth section of lord Baltimore's charter.

he found the facts stated to be true, he was commanded "to seize and bring to St. Inigoe's fort all wines and hot waters imported by the said Ralph Beane or any other."—The commission further directed;—"and you are to require the said Ralph Beane and all other persons intending to freight any tobaccoes out of the province upon the said vessel, that he or they do either come to the fort to discharge or secure the custom, or else that they bring the said vessel under command of the fort, and there lade their tobaccoes, upon peril of forfeiting all tobaccoes, which shall be laden otherwise, *as attempted to be exported afore the custom discharged or secured.*"*—The latter customs, here referred to, on *exports*, appear to have been conformable to the several acts of assembly just before mentioned. But, it must be acknowledged, that the custom upon *imports*, if now exacted by the provincial government upon other goods and merchandize than "wine and hot waters," must have borne particularly hard upon the colonists, who were the consumers, more especially if the same goods or merchandize so imported had paid a custom or excise in England before their exportation thence, and moreover a custom in Virginia also, from whence, as it seems, the goods referred to in this commission were last imported.

This leads us to the notice of an ordinance, passed by the English parliament, about this time, (on the 23d of January, 1646, O. S.) relative to the customs and duties on goods and merchandize exported from England to "the several plantations of *Virginia, Bermudas, and Barbadoes*; which ordinance, although Maryland is not expressly mentioned therein, may nevertheless be supposed to have extended to this colony also; especially as the preamble thereof refers to "other places of America" besides the plantations just mentioned, and the subject matter of the ordinance applied as well to Maryland as Virginia. It may be remarked also, by way of confirmation of this construction, that the parliament and their partisans in America affected to consider Maryland, at this time and for some years after, only as a part of Virginia, and consequently included in that general term.† The ordinance enacted, "that all merchandize, goods, and necessaries, which shall be for the supportation, use, and expense for the several places in *Virginia, Bermudas, Barbadoes*, shall and may be exported from this kingdom, without paying

The English ordinance of 1646-7, relative to customs, &c., and the first English excise law.

* "Council Proceedings from 1636 to 1657," p. 146.

† See the several state papers, relative to Maryland, inserted in Hazard's Collections, vol. 1, p. 620-630.

CHAP. V. any custom, subsidie, taxation, or other imposition, or duty for
 1647. the same, the duty of *excise* excepted,* during the space of three years next ensuing." A proviso is inserted in the next or second section of this ordinance, which seems more properly to apply to the first and preceding one; as follows:—"Provided, that none of the said plantations permit any vessel to take in any goods of the growth of the said plantations *from any of their ports*, and carry them to any foreign parts, *except in English bottoms.*" The house of commons had before this, in the year 1642, (1643, N. S.) through special favour to "the plantations in New England," they being "now likely to prove very happy for the propagation of the gospel in those parts," (*similis simili gaudet*,) made an ordinance or resolve, "that all goods *exported* out of England into New England, or from thence *imported* hither," (that is, into England,) "shall be free from paying any custom, subsidy, taxation, or other duty; either inward or outward, *either in this kingdom or New England.*"† A respectable annalist, on the British colonies in America, observes that these ordinances are "remarkable, as well for asserting over the plantations the parliamentary right of internal taxation, as for establishing in part what was afterwards extended and executed by the famous act of navigation."‡ It may be observed, however, that the first section of this ordinance of 1646 seems to have been intended only as a *regulation of the trade* between England and her colonies, and to imply only a right in the parliament to impose a custom or tax upon goods *exported* from England to the colonies, which custom or tax, upon goods and necessaries for the colonies, unless it had been suspended by this ordinance, (upon the condition expressed in the proviso, that is, that the colonies would *export* their tobaccoes in *English bottoms* only,) would have been collected by the officers of the customs in *England* before exportation. The ordinances of

* The parliament had before this made an ordinance, bearing date the 22d of July, 1643, whereby a duty, which they called an *excise*, was laid upon certain goods therein mentioned; one particular of which it may be proper to mention: "Every pound of tobacco, not of the English plantation, was to pay, over and above all customs, 4s. and that of *English plantation*, 2s." See Rapin's Hist. Eng. (Tindal's edit.) vol. 10, p. 253.—"This was the first time," says lord Clarendon, (Hist. fol. edit. p. 385,) "that ever the name of payment of *excise* was heard of or practised in England; laid on by those who pretended to be most jealous of any exaction upon the people."

† Hutchinson's Hist. of Massachusetts, vol. 1, p. 110.

‡ Chalmers's Annals, p. 176.

1642, in favour of New England, it must be acknowledged, re- CHAP. V.
1647.
cognized, by strong inference, a right in the parliament to impose "taxation" to be collected *in* New England. The independence of the colonies, now United States, has rendered this question a subject more of curiosity than utility. But the second section of this ordinance, of 1646, seems to have some bearing upon the great and important dispute, which has for some years subsisted between the United States and Great Britain, relative to the *expatriation* of British subjects. This section ordains, "that it shall be lawful for any persons, subjects of this kingdom, to transport from hence unto the said plantations such persons as, being fit to advance the trade, shall be willing to be employed in the several plantations: provided the names of them be registered in the custom house books, and also that certificate be returned from the governor of such plantation, within one year, of the arrival of the said persons there."* The parliament, in making this ordinance, appear to have been clearly of opinion, that they had the right and power of imposing *restrictions* on the emigration or voluntary transportation of English subjects to the colonies. If they could impose restrictions in such case, they could totally prohibit. If they could prohibit English subjects from emigrating out of the kingdom, even to their own colonies, they could, *a fortiori*, prohibit them from emigrating to foreign countries or other independent states. These observations are here made only to exhibit the sense of the times upon this subject.

As soon as the winter season was over, as it appears, governor Calvert proceeded to reduce the isle of Kent to the obedience of the lord proprietary; and he seems to have accomplished it some time in April of this year. We have no documents, on this occasion, whereby we might amuse the reader with details of battles, of deeds of personal valour, or of acts of individual honour and generosity. The conquest of the isle of Kent was probably not attended with such brilliant and interesting circumstances. The inhabitants thereof are said to have "submitted themselves again to his lordship's government;" but whether without any resistance we are not informed. The governor went in person to take possession of the island, and, after the inhabitants had taken the oath of fealty to lord Baltimore, he granted his pardon, bearing date April 16th, 1647, to the seve-

The isle of Kent submits, and the government thereof is settled.

* See this ordinance at large in note (LVI.) at the end of this volume.

CHAP. V. ral inhabitants therein named, "of and for all crimes of rebellion,
 1647. or other offences whatsoever, committed within the province at any time before."* He then proceeded to settle the civil as well as military government of the island, and for that purpose issued a commission, on the 18th of April, whereby he appointed Robert Vaughan, gent., to be chief captain and commander under him (the governor) "of all the militia of the isle of Kent, and with it to command and execute whatsoever shall be by him thought requisite for the defence of the said island against all intestine mutinies or seditions, that shall happen within the said island, and against all invasion of any foreign enemies whatsoever." He also "authorised him to constitute and ordain under him all such officers for military service as he should think requisite, and inflict such punishment upon all offenders under his command against martial discipline, as the nature of the offence shall deserve, according to the law martial; provided that where the offence shall deserve the forfeiture of either life or member, that such offender for his trial be referred, and judgment, to the *provincial court* to be held by his lordship's *governor and council* of this province."† He further authorised "the said captain Robert Vaughan to award all process necessary, according to the law and custom of this province, for or concerning all actions civil and criminal within the said isle of Kent; and he authorised the said captain Robert Vaughan, William Cox, Thomas Bradnox, Edward Comins, Philip Conner, and Francis Brooke, gent., or the major part of them, whereof the said Robert Vaughan to be always one, to hear, try, and judge, according to the laws of this province, all actions and causes civil, which shall happen between

* "Council Proceedings from 1636 to 1657," p. 150. The names of those, who were pardoned, and who, therefore, had been engaged in resistance to lord Baltimore's authority, with others who had fled, are thus stated in the preamble:—"Whereas the inhabitants of the isle of Kent, Thomas Bradnox, Edward Comins, John Metham, Thomas Belt, Robert Short, Francis Lumhard, John Ayres, Zachary Wade, Richard Cotesford, Edward Lannin, and Walter Joanes, have taken the oath of fealty to the lord Baltimore, and submitted themselves again to his lordship's government," &c.

† This is additional confirmation of what has been before observed, relative to the origin of the *provincial court*; to wit, that lord Baltimore, in virtue of the seventh section of his charter, which authorised him to erect courts of justice, and to appoint judges thereof, had, in all his commissions to his governor and council, given them the supreme judiciary power within the province; and, as they thereby became the *supreme court* of the *province*, courtesy and common parlance bestowed on them the name of the "provincial court," and this without any formal enactment thereof by the provincial legislature, but by force of his lordship's commissions.

party and party within the said * * * *,† and to award execu- CHAP. V.
tion upon the same, except where the freehold of any one shall 1647.
come in question, provided that it shall be lawful for any man,
at any time before execution served, to appeal from the said
judgment unto the *provincial court* of this province, the appel-
lant first putting in sufficient security to the court, from whence
the appeal is made, for treble damages to be satisfied to the ad-
verse party in the cause, in case he be cast in the provincial
court in the said cause; and he further authorised the said cap-
tain Vaughan and his associates before mentioned, or the major
part of them, whereof the said captain Robert Vaughan to be
always one, to hear and judge, according to the laws of this
province, all crimes and offences committed within the said
island, and to cause such sentence, as shall be given by them
therein, to be executed, excepting where the life or member of
any one person shall come in question.”‡ This arrangement for
the administration of justice in the isle of Kent seems to have
been similar to what had been before practised in the latter end
of the year 1642,§ when that island appears to have been first
considered as a *county* distinct from that of St. Mary’s, and not
a *hundred* appertaining to it, as it formerly was by the bill enti-
tled, “an act for the government of the isle of Kent,” passed at
the session of 1638–9. The appellate jurisdiction of the pro-
vincial court, traced out by this commission, seems also to have
been nearly the same as that which continued to be practised
from county courts during the existence of the provincial go-
vernment.

Before the governor left the island, he issued, on the 20th of
April, another commission “to captain Robert Vaughan and the
rest of the commissioners of the isle of Kent,” (viz: those gen-
tlemen just before mentioned in the preceding commission,) re-
quiring them “to cause all such lands, goods and chattels, as
were belonging unto any of the late rebels on the island of Kent,
and who had fled from thence, or who were remaining in the
said island and had refused to take the oath of fealty to his
lordship, to be attached and kept in safe custody by some officer
to be appointed by them, until every of the said persons respec-
tively should appear before the governor and the council of this

† This blank is so in the record, but the words,—“isle of Kent”—seem to be
evidently those omitted.

‡ “Council Proceedings from 1636 to 1657,” p. 148.

§ See before, p. 247.

CHAP. V. province at St. Mary's, to answer their several crimes of rebellion and refusal of the said oath, and abide judgment of court therein." After his return to St. Mary's, he issued a proclamation, on the 8th of May, much to the same purport of that of the 16th of January preceding, prohibiting the departure of any person out of the province without leave, or the entertainment of, or holding communication with, any stranger, until they had first been at the fort of St. Inigoes.* These proceedings were rigid, but perhaps dictated by necessity or self-defence. In further arrangement of the affairs of the isle of Kent, he authorised captain Vaughan, by commission dated the 31st of May, "to collect, demand, and receive, for the use of the lord proprietary, all customs, confiscations, forfeitures, and escheats by any means, and at any time due to his said lordship upon the said island;" and also, at the same time, by two other distinct commissions to Mr. Francis Brooke, he was required to take into his custody "all neat cattle belonging to his lordship on the said island," and particularly "all the estate of John Abbott, late of the said island."†

Governor
Calvert's
death, and
character.

These were the last acts of governor Leonard Calvert, which we have upon record; for, in a few days afterwards, on the ninth of June, he died.—Of the private character of this gentleman we are not enabled to speak with any certainty, nothing relative to him but in his public capacity being transmitted to posterity. If a faithful performance of the various trusts reposed in him by his brother in the government of an infant colony can imply honesty and integrity of character, he seems to be fully entitled to it; and, if we may credit the eulogy passed upon him in the two last commissions for the government, he appears also to have given in his public character general satisfaction to the colonists. From the scanty materials of the preceding part of our history we have, it is true, been authorized in noticing, particularly at the September session of 1642, some symptoms of discontent with his conduct on the particular occasions there mentioned; but it would be improper to censure him too hastily under the imperfect information we have at this day of those transactions. We see, therefore, no just reason to withhold

* This proclamation does not appear at large among the records, but the substance of it, as above, is recited in that of governor *Green's*, hereafter stated.

† These "neat cattle" we may suppose to have been part of the confiscated property of rebels on the island, as also of the estate of John Abbott.

from him the commendation bestowed on him in the above mentioned commissions, wherein, it is said, he manifested in the discharge of his office of governor of the province, "such wisdom, fidelity, industry, and other virtues, as rendered him capable and worthy of the trust reposed in him."

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1647.

An inconvenience, which would otherwise have resulted to the lord proprietary's interest in his province upon the death of governor Calvert, was fortunately prevented, for a time at least, by his verbal nomination of Mr. Thomas Greene, as his successor, in virtue of a special power vested in him for that purpose by his lordship's commission. This fact is best stated in the words of the entry on the record.

Thomas
Greene,
esq., his
successor.

"June 10th, 1647.—Whereas by commission from the right honorable Cecilius lord proprietary of the province of Maryland to the late governor Leonard Calvert, esqr., bearing date the 18th of September, 1644, at his lordship's fort at St. Mary's in the said province, he the said Leonard Calvert was authorized, in case he should happen to die or be absent from time to time out of the said province, to nominate, elect, and appoint such an able person, inhabiting and residing within our said province, as he in his discretion shall make choice of and think fit, to be governor of the said province; These are, therefore, to publish and declare to all persons, whom it may concern, that the said Leonard Calvert did, by word of mouth, on the ninth day of June, 1647, (lying upon his death bed, yet in perfect memory,) nominate and appoint Thomas Green, esqr., one of the council of this province, to be governor of the same, with all the same authority and power of government as he the said Leonard Calvert was authorised by his lordship's commission to confer upon him, as by the oaths of Mrs. Margaret Brent and Mary Brent,* Francis Anketill, and James Linsey, (who were all then present with him at the same time,) is averred to be true.—*Teste me,*
WILLIAM BRETTON, Clk."†

Although Mr. Hill had, upon the restoration of governor Calvert, retired to Virginia, as before mentioned; yet, not receiving, as it would seem, the stipulated compensation for his salary

Mr. Hill
renews his
claims
upon the
province.

* These ladies were the sisters of Mr. Giles Brent, whom we have frequently had occasion to mention before. The *Brent* family were probably connected with that of lord Baltimore by either blood or marriage; and it appears, that Mrs. Margaret Brent now became the administratrix of Mr. Leonard Calvert's estate. *Kilty's Landholder's Assist.* p. 104.

† "Council Proceedings from 1636 to 1657," p. 152.

CHAP. V. while governor, so soon as he expected, he applied to Sir William Berkeley, then governor of Virginia, to intercede with governor Calvert in his behalf. Sir William accordingly wrote a letter to governor Calvert on the subject, but which letter, dated on the 12th of June this year, did not consequently arrive at St. Mary's before the death of Mr. Calvert. It appears to have been sent by Mr. Hill, together with a letter of his own on the same subject, to general Calvert, without a knowledge perhaps of his death; which letter of his own bears date on the 18th of June, from a place called *Chicocoan*, situated, as we apprehend, on the Virginian side, or south bank, of the Patowmack; where some settlers had probably fixed themselves, and to which place he had repaired for greater convenience in making his demands, if not for annoying the government of Maryland.* His claim for a compensation for his salary might, perhaps, have some foundation in justice; but his pretensions to the office of governor of the province, which he seems to have deemed paramount even to that of governor Calvert, are obviously founded on the most frivolous reasons. His threat of regaining possession of the government, "by some strange overture," which he afterwards explains to mean "a parliamentary influence," though he professed at the same time to act in behalf of lord Baltimore, bespeaks a mysterious duplicity incompatible with the character of a man of honour. Mr. Green, as governor, returned to Sir William Berkeley a very proper answer to his letter; informing him of the death of governor Calvert; assuring him, that neither governor Calvert nor himself ever had any intentions of withholding from Mr. Hill any claim whatever, which was justly due to him; and requesting him "to take some effectual course, that captain Hill might not by his evil designs and practices proceed to disturb his majesty's the king's peace here," (in Maryland,) "of whose unjust and wicked design of invading this province by the way of Chicacoan and Appamatuck with some other forces to be drawn out of other parts of Virginia he had credi-

* There is a river called *Coan*-river in Northumberland county in Virginia, emptying into the Patowmack, nearly opposite to St. Mary's river in Maryland. This seems, most probably, to be the place from whence Mr. Hill dated his letters. *Appamattox*, another place mentioned in his letters, might have been the same as *Mattox* creek in Westmoreland county, higher up the Patowmack, on the Virginia side. From a proclamation, which will be presently stated, it appears, that many of those, who were concerned in the rebellion against lord Baltimore's authority, had, on the return of governor Calvert, fled to these places in Virginia, where some Virginians had previously settled, or they themselves commenced settlements there.

ble information by others, and, of late, expressions of his own sent under his own hand from Chicacoan to that purpose.”* CHAP. V.
1647.
Our documents furnish us with nothing more of these extraordinary pretensions of Mr. Hill; and Mr. Green appears to have proceeded quietly in the discharge of his duties as governor of the province.

Among the first of his proceedings one appears, which, as it exhibits the distressed state of the colony at this time, as well as an extraordinary exercise of executive power, ought not to be passed unnoticed. Captain John Price,—captain of the fort of St. Inigoe’s, having informed the governor, that there was a great want of corn in the fort, and having requested him to take some speedy course to supply the said want, “it was ordered by the governor, that all such corn as should be in any one’s possession within the province, more than for his own and his family’s proper use, should be *pressed*, at the rate of 120 lb. tobacco per barrel, being at this time the common rate within the province, upon his lordship’s account and for the maintenance of the said fort.” Accordingly on the next day, (June 18th,) a commission issued to sergeant Mark Pheypo, “to take up and press, upon his lordship’s account, for the use and maintenance of the fort of St. Inigoe’s, five barrels of corn belonging to Cuthbert Fenwick, gent., and deliver it to captain John Price, captain of the said fort.”† This proceeding must have been grounded either on the ancient royal prerogative of *purveyance*, whereby *provisions* for the royal household might be seized and paid for at the common rate or price; or on the prerogative of *pressing* ships, carts, waggons, and *provisions* in time of war; both which prerogatives had hitherto been deemed legal in England, and the lord Baltimore’s palatinate *regalia* might have been supposed to have given him the same rights.‡ The situation of the province at this time, on the brink of destruction through the

* As the correspondence between Sir William Berkeley, Mr. Green, and Mr. Hill, contains the facts above stated, and the reader’s curiosity might be gratified in the perusal of them, they are inserted entire at the end of this volume in note (LVII.)

† “Council Proceedings from 1636 to 1657,” p. 154.

‡ It will be recollected, that the prerogative of *purveyance* was not abolished until the restoration, by the statute of 12 Car. 2, ch. 24, together with feudal tenures; and, at this very time, the parliament were exercising the arbitrary power of *pressing* even *soldiers* for the service in Ireland; as appears from the petition of the army, dated June 4th, 1647; stated in *Rapin’s Hist. Eng.* (Tindal’s) edit. vol. X. p. 880.

CHAP. V. consequences of civil war, which had nearly produced a famine,
 1647. and at the same time harassed by the hostilities of the savages, seems to afford ample excuse for this small stretch of power, especially as it was then deemed to be within the pale of the law.

War with
 the Indians
 of Nanti-
 coke and
 Wicomico.

That the Indians of the province were now also unremitting in their warfare upon the colonists, appears from a commission issued within a few weeks after the above transaction, (on the 4th of July,) to captain John Price. The preamble thereof states, that "the inhabitants of this province have sustained divers great losses in their estates by the Indians of *Nanticoke* and *Wicomick*, enemies of this province, who making incursions *here* have assailed and set upon divers of the inhabitants of this province,* and have committed divers insolencies, rapines, murders, and other barbarous cruelties, *by the way of trade*,† and that divers overtures of peace had been made to them; but notwithstanding they still persist in their wicked and barbarous intentions toward us." The commission then authorises him,—“to take thirty or forty such able men as he shall think fit and make choice of for that purpose, with sufficient arms, provision, and ammunition, and them to embark in such vessel or vessels as he the said captain John Price shall think fit and convenient, and with the said men to go over unto the towns and plantations of the Indians of *Nanticoke* and *Wicomick* aforesaid, lying to the eastward of this province, and then and there to employ his utmost endeavour, skill, and force, by what means he may, in destroying the said nations, as well by land as by water, either by killing them, taking them prisoners, burning their houses, destroying their corn, or by any other means as in his best discretion he shall judge convenient.”‡ Whether this expedition un-

* The Indians of “*Wicomick*,” here mentioned, certainly mean those who inhabited on or near the *Wicomico* river in Somerset county, who, in conjunction with those of *Nanticoke* in Dorchester, were then in the habit of crossing the bay and assailing the inhabitants of St. Mary’s. The expression—“making incursions *here*,”—evidently refers to St. Mary’s, and it does not appear, that any population by the colonists had as yet taken place any where on the eastern shore, except on the isle of Kent.

† We may suppose, that this means, that the Indians of *Nanticoke* and *Wicomick* visited St. Mary’s county, under the pretence of trading with the colonists, but in reality to plunder them.

‡ “Council Proceedings from 1636 to 1657,” p. 161.—This commission further required captain Price, “that he make no distribution or division of any plunder or pillage whatsoever, which shall be gained or taken by any soldier or soldiers during the said voyage from any the aforesaid Indians, until he shall arrive at St. Inigoe’s fort, and there given a just account of all such plunder or pil-

der this commission took place or not, or if so, what were the incidents of it, we are no where informed. Captain Price appears to have been relied upon, at this time, as a man of some experience in military affairs; and, for his fidelity to the lord proprietary, during Ingle's rebellion, was subsequently, in 1648, created "muster master general" of the province; in which commission his "abilities in martial affairs" are highly commended by his lordship.

From some proceedings of the governor and council, which occurred about this time, we are authorised in inferring, that many of the Maryland colonists, who had been engaged in the late rebellion against the lord proprietary, had, on the "invasion" or return of governor Calvert, fled out of the province, and taken refuge at the before mentioned places on the Virginian side of the Patowmack—called *Chicacoan* and *Appamattucks*; from whence they frequently returned to St. Mary's in an armed, though probably clandestine, manner. To prevent this, it was thought proper to make the following order.—"September 15th, 1647.—It is this day ordered by the governor, that this oath following be administered to all persons that have had any hand in the late rebellion here, whenever they shall come into the province, and that the captain or commander present of the fort* is hereby authorised and required to administer the said oath to all such persons coming in as aforesaid; And further, the said captain or commander shall take into his possession and keep in safe custody within the fort all such arms and ammunition as any of them shall bring with them at their coming into the province, and see them safe delivered unto them again when they shall depart the said province, and this as often as any of them shall come or go from hence."

Cautious
proceed-
ings to re-
gulate the
return of
the disaf-
fected.

The oath prescribed in the above order was in substance nearly as follows:—

"You shall be true and faithful, (so long as you shall remain in this province, and as often as you shall return into the same,) to the right honourable the lord proprietary of this province and his

lage."—This privilege of plundering the Indians seems to have been mentioned in almost all the early commissions of the province for making war upon them. See what has been said upon this subject herein before, p. 289.

* The fort, here alluded to, seems to have been St. Inigoe's, where governor Calvert, on his return, and governor Green as his successor, kept their head quarters. St. Inigoe's fort must have been a different one from that of St. Mary's or St. John's, both of which last mentioned forts we have seen before frequently referred to in the proceedings of the province.

CHAP. V. heirs, and to his governor for the time being; and all conspira-
 1647. cies and practices, as you shall know or hear of, against them or any of them, you shall resist to your power, and reveal the same to them or some person in authority under them within twenty-four hours; and you shall not use any means or persuasions directly or indirectly to draw any of the inhabitants of this colony to forsake the governor."

To give publicity to the foregoing order and to enforce the same, a proclamation was issued, on the same day, of the following tenor:—

"By the lieutenant general.—Whereas divers of the inhabitants of Appamatucks and Chickacoan have several suits depending in this next court, and that justice may be duly administered to them and to all other persons, without danger of disturbance of the peace and welfare of this province; these are to give notice to all persons, that had any hand in the late rebellious action of this province, that they neither may nor shall have any hearing in court, or be admitted within this province, before such time as they have taken oath of fealty unto the lord proprietary and his governor for the time being, during the time they remain within the province; and that the said oath shall not be understood by them only for this present, but shall firmly bind them in futurity, so often as they shall have occasion to come into the province; and that at any time when they come into the province they shall deliver all such arms and ammunition, as they bring with them, unto the commander of the fort, which shall be restored to them when they depart the province; and that the proclamation set forth, the 8th of May last, by the late governor Leonard Calvert, esqr., touching the departure of any person out of the province without leave, the entertainment of any stranger or holding communication with them, until they have first been at the fort of St. Inigoe's, shall stand in full force and virtue until Christmas day next; further, these are straitly to prohibit and forbid all persons of this province whatsoever to give any entertainment to, or admit into their houses, any of the persons aforesaid, without first shewing a certificate from my hand or the captain or commander of the fort present there, that they have there taken oath of fealty to his lordship; upon pain of such severe censure as the court shall adjudge such an attempt to deserve. Given at the fort of St. Inigoe's, the 15th September, 1647.

THOMAS GREENE."*

* "Council Proceedings from 1636 to 1657," p. 163-4.

Although the foregoing order, or ordinance, and proclamation thereupon, would be now deemed inconsistent with the principles not only of American but of English liberty, as being repugnant to that clause in *magna charta*, whereby “no freeman was to be disseized of his liberties, or be outlawed, or exiled, or condemned, but *by lawful judgment of his peers or by law of the land*,” yet, agreeably to those unfortunate maxims, which the princes of the house of *Stuart* had adopted, whereby the monarchy of the realm was supposed to possess the power of supplying the necessity of laws by proclamations, a clause had been inserted in lord Baltimore’s charter, (the eighth section,) enabling him, or his magistrates and officers, to make *ordinances* from time to time, to be observed within the province, “as well for the conservation of the peace, as for the better government of the people inhabiting therein, and publicly to notify the same.” The justification of this investment of power in his lordship is stated by way of preamble to the clause, to have been, “that in the government of so great a province, sudden accidents may frequently happen, to which it will be necessary to apply a remedy, before the freeholders of the said province, their delegates or deputies, can be called together for the framing of laws.” It must be confessed, that, however dangerous such powers may generally be, if vested in the executive branch of a government, yet, considering the situation of the province at this time, a case could scarcely occur, where the necessity of assuming and exercising such extraordinary powers could be more urgent than the present; if it be allowed, that it was justifiable at all to maintain the lord Baltimore’s authority over, and possession of, the province. To have called a general assembly of the freeholders, (and every freeholder in the province was entitled to a seat therein,) divided and distracted as they must have been at this time by their late provincial civil war, would have been highly impolitic, if not dangerous to the peace of the community, as well as to lord Baltimore’s rights; besides, the unavoidable delay of legislative proceedings might have admitted the mischief before the means of prevention could have operated. Governor Greene, therefore, appears to have acted correctly on the occasion.

In the same point of view we are to consider another proclamation issued by him in a month or two afterwards, (November 10th,) to prohibit the exportation of corn and horses out of the

The exportation of corn and horses prohibited.

CHAP. V. province. The season of the year had now arrived, when the
 1647. quantity of Indian corn made in the province could with tolerable exactness be ascertained, and exportation of it usually occurred. The attention of the inhabitants had been, in the preceding part of the year, so occupied with their unhappy civil dissensions, as to occasion a neglect of their crops. An apprehension of a scarcity of this necessary article of food seems to have been, therefore, a natural consequence, and dictated a prohibition of its exportation, especially if it was true, as stated therein by the governor, that "there was no great likelihood of any considerable supply thereof to come in from abroad." The stock of horses within the province he states also to have been "as yet very small." The transportation of these, as well as the exportation of corn, was therefore prohibited by this proclamation, "upon pain of such severe punishment as shall be thought fit by the *provincial court*." Over such offences, it may be supposed, that this supreme court of the province considered, that they had lawful jurisdiction and might punish by legal discretionary fine, as and for a misdemeanor at common law in the breach of a lawful ordinance.*

The administratrix of governor Calvert adjudged to be his lordship's attorney in fact, as governor Calvert had been.

On the same day, (November 10th,) or about the same time, a proceeding of the *provincial court* took place, which, although it be apparently of a private nature, yet, being materially connected with the affairs of the provincial government, cannot properly be omitted. It is most proper to state it in the words of the record.—"This day† the question was moved in court, whether or no, Mr. Leonard Calvert remaining his lordship's sole attorney‡ within this province before his death, and then dying, the said Mr. Calvert's administrator was to be received for his lordship's attorney within this province, until such time as his lordship had made a new substitution, or that some other remaining upon the present commission were arrived into the province. The governor demanding Mr. Brent's opinion§ upon the same *quere*, he answered, that he "did conceive that the administrator ought to be looked upon as attorney, both for recovering of rights

* "Council Proceedings from 1636 to 1657," p. 165.

† No date is affixed to the record of the proceeding; but the expression above may be presumed to allude to the date of the preceding document, to wit, that of the preceding proclamation, the 10th of November.

‡ This certainly meant his lordship's *attorney in fact* as to his private affairs, and not his *attorney general* of the province, a public officer.

§ Mr. Giles Brent was then the oldest councillor, being the first named in the last commission of the council, of 1644.

into the estate, and paying of due debts out of the estate, and taking care of the estate's preservation, but not further, until his lordship shall substitute some other as aforesaid; and thereupon the governor conceived, and it was ordered, that the administrator of Mr. Leonard Calvert aforesaid should be received as his lordship's attorney to the intents above said."*

CHAP. V.
1647.

Although the word "administrator" is used in the preceding document, yet, it is most probable, that agreeably to the phraseology of those times, such word might have been in common use as applicable to a female as to a male person, to whom letters of administration on the estate of one deceased might have been granted; and, as Mrs. Margaret Brent appears to have been unquestionably the *administratrix* of the estate of governor Leonard Calvert,† the preceding order of the provincial court appears to have been a judicial determination, that Mrs. Margaret Brent might lawfully act as the *attorney in fact* of lord Baltimore as to his private estate within the province. There appears, however, at this day, some indelicacy in resting such a question upon the decision of Mr. Giles Brent, who was a brother to Mrs. Margaret Brent, a single lady; and, in connection with this circumstance, it is proper to mention here, that lord Baltimore subsequently expressed great displeasure either with her conduct as to his estate or at her appointment agreeably to this decision, or at both, as will be seen hereafter. This lady, (*Miss Brent*, in modern phraseology,) appears to have possessed a masculine understanding; and she is stated, by a writer much conversant in the land records of Maryland,‡ "to have been very actively employed in taking up lands, and in affairs of all kinds relating to property."

Towards the close of the year, the affairs of the province subsiding into some order and quiet, the governor thought it proper to resort to the regular and constitutional mode of exercising the powers of government, by calling an assembly. He, therefore, issued a proclamation for that purpose, bearing date the 14th of December, 1647, in which he states, that "Whereas the present important affairs of the province do necessarily require the speedy general assistance and assent of the inhabitants thereof, as

An assembly
called.

* "Council Proceedings from 1636 to 1657," p. 165.

† I rely upon this fact, because it is so stated by Mr. *Kilty*, (in his *Landholder's Assistant*, p. 104,) who had opportunity of accurately consulting the records.

‡ Mr. *Kilty*, in his treatise last cited, *ibid*.

CHAP. V. well for the settlement of some present urgent difficulties, as for
 1647. the establishment of such wholesome laws as shall be conducing to the well and happy government of the said province; these are, therefore, to declare unto all persons, whom it may concern, that I do intend to hold a general assembly at St. Mary's on the seventh day of January next, and I do further require, in the lord proprietary's name, all and singular the inhabitants of this province, either by their personal appearance, or by proxy, or delegates, to attend the governor and council at St. Mary's, on the seventh of January as aforesaid, there to advise and consult of the important affairs of the province; where, by way of caution, I advise all such as shall not give their personal attendance therein, that they make choice of such persons for their delegates, whose able judgments and fortunes may render them more considerate to the weal public." Special notice thereof was also given to the inhabitants of the isle of Kent, the journal of this session stating, that "summons had been sent up to Kent by way of proclamation."

1649. On the seventh of January, (the day appointed by the proclamation,) the governor and freemen of the county of St. Mary's met, but no return of the summons being made from Kent, the governor adjourned the assembly till the seventh of February. In a few day afterwards the members from Kent arrived, when the governor upon consultation, thinking that "so long delay," as waiting to the day of adjournment, would "prove disadvantageous to the whole country," issued his writ to the sheriff of St. Mary's county to give notice to all the inhabitants thereof, that he intended to anticipate the aforesaid adjournment, and expected them, either by personal appearance or by proxy or delegates, to attend the governor and council at St. Mary's on the seventeenth instant.

The assembly meet.

The house accordingly met on the 17th, and also on the 18th of January, but "by reason of the absence of Mr. Bretton, their clerk, the house adjourned till Thursday next."

"On Thursday, the 20th of January, the general assembly at St. John's assembled."—Present, governor Greene, captain Robert Vaughan, fourteen other members whose names are stated on the journal, "and divers other inhabitants," as the journal expresses it.—It is stated therein also, that captain Vaughan appeared "with twenty-six proxies of the inhabitants of Kent;" that is, that he appeared as a delegate from or representative of

twenty-six inhabitants of Kent.* In like manner the fourteen members, whose names are stated on the journal, (from St. Mary's,) are each of them mentioned as appearing with their respective number of proxies therein stated, amounting for the whole fourteen to fifty-six proxies, that is, fifty-six voices to be counted on a vote besides their own, and besides the twenty-six voices to be given by captain Vaughan.—After the appearance of these members had been recognized on the journal, and after the verification of their powers as proxies, as we may suppose, “the house was adjourned *by the governor* till two o'clock in the afternoon.”

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1648.

It will perhaps have occurred to the reader, that the mode of summoning this assembly varied somewhat from that, which, in several instances, had been before practised in the province. No writs of summons, directed either to the sheriff or individual freeholders or freemen, of either of the counties of St. Mary's or isle of Kent, appear to have been issued; but proclamations were published in each of those counties, which were the only parts of the province, where settlements of any consideration had been as yet made, “declaring to all persons whom it might concern, that the governor intended to hold a general assembly at St. Mary's on the 7th of January, and requiring *all the inhabitants* of this province, either by their *personal appearance*, or by *proxy*, or *delegate*, to attend the governor and council at St. Mary's.”—From this it would appear, that *every inhabitant* of the province was considered as having a right to a seat in this assembly, whether he was a freeholder or not; but, as will presently appear, it seems to have been considered necessary, that he should be a *freeman*, and not a *servant*. Hence, therefore, it may be inferred, that those members, who did attend, were such inhabitants as to whom it was convenient to do so, and consequently brought with them *proxies*, or authorities, to vote, from those of their neighbours or fellow inhabitants of their respective *hundreds* of St. Mary's county, and from the isle of Kent generally, who could not conveniently leave their business and their homes. This confused and unsettled state of the legislative powers of the provincial government, seems to have presented itself to the governor and council, as well as to the different

* It will be recollected, that captain Vaughan was at this time also, by the commission before stated, of the 18th of preceding, (see ante, p. 304,) “chief captain and commander” of the isle of Kent; which office seems to have been of the nature of a lieutenant or deputy governor, under the governor of the province.

CHAP. V. members, who had assembled, as a subject which demanded
 1648. their first and principal attention. Accordingly, as soon as the
 Their pro- house assembled "at two o'clock in the afternoon," agreeably to
 ceedings. their adjournment, a bill, previously prepared, as it seems for
 this purpose, was read, entitled, "an act for settling this present
 house of assembly;" which was, as follows:

"Be it enacted by the lord proprietary, of and with the advice
 and assent of the freemen of the province, that his lordship's
 council present in the province,* and these sixteen persons, cap-
 tain John Price, captain Robert Vaughan, Mr. Fenwick, Mr.
 Bradnox, Mr. Conner, Mr. Thornborough, Mr. Brooks, Thomas
 Allen, Richard Banks, Barnaby Jackson, George Saphyer, George
 Akerick, John Medley, Walter Waterlin, Walter Pakes, Edward
 Packer, or any ten of them assembled with the governor and the
 clerk of the assembly, at the time and place prefixed by the said
 governor, shall be a house of assembly to all intents and pur-
 poses, and all bills passed by the said freemen or the major part
 of them, and enacted by the governor, shall be laws, after publi-
 cation thereof under the hand of the governor and present seal
 of the province, as fully to all effects in law as if they were ad-
 vised and assented unto by all the freemen of the province in
 person.

The freemen assented unto it;

Published *Eod.*

The governor assented unto it; and enact-
 ed it in the name of the lord proprietary."

No further proceedings of this day's session appear on the
 journal, except that "the house was adjourned by the governor
 till to-morrow 9 o'clock."—From which expression it may be
 inferred, that the house had yielded to *the governor* their consti-
 tutional right of *adjournment*, though it is possible, that, agreea-
 bly to the resolution of the assembly in the year 1641–2, it was
 adjourned "by and with the consent of the house."†

Although by this adjournment the house was to have met on
 the next day, yet no mention is made on the journal of any pro-
 ceedings on that day; but, on Saturday, the 22d of January, a

* By the last commission for the council, which governor Calvert brought out
 with him on his return from England in 1644, Giles Brent, John Lewger, Tho-
 mas Greene, Thomas Gerard, and James Neale, esq's, were appointed to form
 his lordship's council in the province.—(See before, p. 284.) No commission for
 the council of any later date appearing on our records, the preceding gentlemen
 must be considered as the members of his lordship's council in the province at
 the time of passing the above act, with the exception, that Mr. Greene was now
 advanced to be governor of the province.

† See ante, p. 195.

circumstance occurred, which deserves notice.—Under a principle heretofore remarked upon, as being repeatedly exercised in the early sessions of our provincial legislature, and was evidently so at the present session, every *freeman* within the province was entitled to a seat in the assembly thereof, and therefore agreeably to the principles of the English constitution with regard to the house of lords, every freeman, so entitled, had power to appoint another freeman to appear and vote for him in his stead, as his *proxy*; but, it would seem, that agreeably to another ancient principle of English law, that a legislator sitting, under a delegated authority, could not delegate that delegated authority to another;* and that, therefore, none of the members, enumerated as such in the preceding act “for settling this present house of assembly,” and who had been also authorized to vote as *proxies* for other freemen not present, could, on absenting themselves from the house, appoint another member to vote for any other person than himself; yet this appears to have been attempted, as it would seem from the following entries on the journal of that day.

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1648.

“George Akerick” (one of the sixteen members nominated in the last preceding act,) “appointed Mr. Clark, *proxie* for himself *and all his voices*.” Also, “John Medley” (another of the sixteen before mentioned,) “appointed Francis Posie *proxie* for himself *and all his voices*.”

As these two gentlemen,—Mr. Clark and Mr. Posie were not, either of them one of the sixteen members enumerated in the last preceding act, their sitting in the house would appear to have been an additional irregularity; but it is possible, that as the act has no expressly exclusive terms, other freemen of the province might have been considered as admissible to seats in the house when claimed by them. The house, however, appears to have been sensible of these irregularities; as may be inferred from the following *order* made by them on their next day of sitting:—

“Monday, 24th January.—It is this day ordered by the house, that no one, except the forenamed 16 members, or their delegates, assembled, with the governor and the clerk, shall have vote or seat in the house *afore the general day of sessions*.”

Published *Eod.*

* See this principle remarked upon before, in p. 49.

CHAP. V. It may be remarked on this order, that although the words—
1648. “or their delegates,”—would authorise any one of the sixteen to make a proxy for himself, and that such proxy might be another person than one of the sixteen, as appears to have been the case in regard to both Mr. Clark and Mr. Posie, yet it does not seem to go so far as to authorise him to make a proxy for any other person for whom he had appeared as a proxy; and, therefore, the appointments of George Akerick and John Medley, “for all their voices,” do not appear to have been strictly included within the above order. It is possible, however, that such “delegates” of any of the sixteen members might, by implication, have been considered as invested with all the powers before vested in their principals, and voted accordingly.

Some obscurity also seems to attend another expression in the above order:—“afore the general day of sessions.”—This can be interpreted to mean only “the day” to which the governor had adjourned the assembly, before the arrival of the members from Kent as before stated, to wit, “the seventh of February,” when other freemen or inhabitants of the province, then those sixteen mentioned in the act, might be admitted to their seats in the house, and the above order, of the 24th of January, would cease to operate. But, although this session appears to have continued until the fourth of March following, yet no proceedings of the house, after the month of January, appear on record, except some depositions which will be hereafter stated.

Another order of the house took place on this same day; (January 24th,) which, as it has a close connection with a subject which seems to have agitated the minds of the people of this province for several years after the late restoration of governor Calvert, cannot with propriety be omitted. When governor Calvert raised and mustered his little army in Virginia for the subjugation of his province, he promised the soldiers and others of his party, that the soldiers’ wages and the charges of the expedition should be defrayed out of the private estate of lord Baltimore within the province, and that the people of the province should not be burthened with any of the expenses arising thereon. This promise seems to have been understood, as extending not only to the payment of the soldiers’ wages, while engaged in the expedition, but to their support and maintenance while in garrison at St. Inigoe’s fort for the preservation of the peace and order of the province. The perturbed state of the

colony, throughout the preceding year, (1647,) had produced a scarcity of corn, so that the soldiers in garrison were rendered dissatisfied for want of bread stuff, and some danger of mutiny was likely to ensue. The house, therefore, made the following order, entitled, CHAP. V.
1648.

“An order of this present assembly for the levying of corn towards the defraying the soldiers’ wages.”

Published *eod.* “Whereas divers of the soldiers, now being in the country are altogether destitute of corn for their present subsistence, which (by conditions with the late deceased governor contracted,) should have been defrayed before this time, but by reason of the scarcity thereof this year in the country, and no corn remaining on his lordship’s estate more than what is already distributed unto the said soldiers, his lordship’s attorney* (to whom it belongeth) is unable for the present to discharge, until corn be brought into the province by way of trade or otherwise; and whereas in the meantime, unless some speedy course be considered upon and taken by the country in discharging of the said corn, it is much to be feared that divers disturbances may happen in the province, even to the utter subversion and ruin of the same; to prevent which mischiefs, (it being apprehended, that there is some considerable quantity of corn in the country by divers concealed for their private interests, which if it were purchased of the owners and distributed in part among the said soldiers would be a great satisfaction to them, and consequently a stop to all fears of ensuing mischiefs,) Be it therefore ordered, by the authority of the aforesaid present assembly, that the governor shall have power, by one or more sworn officers thereunto by him appointed, to view and measure every man’s corn in the province, and where there shall be more found than sufficient to suffice that household, that is to say, above two barrels for every head except sucking children, to press the same and deliver it to his lordship’s attorney for the soldiers’ use, allowing the owners thereof 150 lb. tobacco per barrel at the next crop, or to have so much again restored this year if corn should be brought into the province by trade or any other ways, if they shall desire it, to be recovered of his lordship’s attorney; and any one that shall conceal any corn, and not bring all his whole quantity of corn to the officer’s view, that then such party shall forfeit the said

* This seems to mean his lordship’s attorney *in fact*—Miss Brent before mentioned, and not the attorney general of the province.

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 1648. the price of the said corn.

“And it is further ordered, by the authority aforesaid, that the proclamation set forth by the governor, bearing date November 8th, 1647,* concerning the exportation of corn out of the province, as also the preservation of the increase of the stock of horses, be in full force and power, until it shall be repealed by the said governor.”

Two or three other circumstances occurred at this session, illustrative of the constitutional principles of the provincial government at this period, and therefore deserve to be mentioned.

At the sitting on “Wednesday, the 26th of January, Nicholas Gwyther petitioned to have vote in the house as a *freeman* of the province.—Mr. Fenwick denyeth it, saying, that he oweth him *service*.”—On Saturday, the 29th of January, the assembly took up the consideration of Gwyther’s petition, and the following entry appears to have been made the result thereof.

“Upon the petition of Nicholas Gwyther the house censured, that they found no service due to Mr. Fenwick from the said Nicholas Gwyther; but, that the product of his labour, over and above his necessary maintenance after war was done, should be coming to Mr. Fenwick; the said Nicholas Gwyther to bring in upon oath a just account into the house, between this and Monday morning, to the time that this *service* expired.”

Nothing more appears on the journal relative to the subject; but we may infer from the terms of the preceding decision or “censure” of the house, as the phrase was in those times, that in case it should appear, that Gwyther was not a *servant* of Mr. Fenwick, he (Gwyther) would be entitled to a seat and vote in the house. Consequently, that the word *freeman* was not constitutionally synonymous with that of *freeholder*, but meant any man who was not a *servant*; which opinion seems to be consonant with that before expressed by the assembly of September, 1642, in the case of Mr. Weston.†

It is at this session also, that Miss Margaret Brent, the remarkable lady before mentioned, made her application to the

*There is some variation here in mentioning the *date* of this proclamation as above, as being the *eighth* of November, when the record of the proclamation at large, as before cited, p. 314, states it as of the *tenth*. The reference above is certainly to the same proclamation before stated as dated the *tenth* of November. It might have been an error in the clerk who made the original record or who transcribed it into the present book.

† See before, p. 238.

house of assembly, "to have a vote in the house for herself, and another as his lordship's attorney. This was refused peremptorily by the governor, Greene, and the lady protested in form against all the proceedings of that assembly unless she might be present and vote as aforesaid."*—It will be recollected, as being just before stated, that the "administrator" of Mr. Leonard Calvert's estate was adjudged to be the most proper person to act, in the place of Mr. Leonard Calvert deceased, as his lordship's attorney *in fact*, for the management of his private estate within the province. The above incident is additional proof, that Miss Brent was the "administrator" alluded to in that adjudication. As a woman is certainly, by the law of England, not only unentitled to a vote at an election for members of parliament, but is ineligible to a seat in the house of commons, either in her own personal right or as the representative of any county or borough, it would seem, that governor Greene, or the house for him, as is most probable, decided with great propriety in refusing to Miss Brent a seat and vote in the house of assembly. Not that women in general, or this lady in particular, are or were not endowed with sufficient understanding to perceive and direct the true interests of a state, but in popular assemblies there would be an indelicacy in their mingling in the order of debate with the opposite sex; while at the same time experience in the reign of queen Elizabeth, to whose character that of our Maryland lady may be aptly compared, has abundantly demonstrated, that monarchical power cannot be more safely lodged than in female hands.

The other and only proceeding of the house of any importance remaining on the journal, not yet mentioned, is a *protest*, entered on the journal by a large majority, if not the whole, of the members of the house, with their names annexed thereto,† against all the laws" (they were only two in number) "made at the last general assembly of the 29th of December, 1646–7, convened by governor Calvert immediately on his restoration to the government of the province. The protest was as follows:—

* This fact, as above stated, is taken from *Kilty's Landholder's Assist.* p. 104. Nothing appears on the journal of the house relative to the matter, or if it does, I have accidentally omitted it in my notes. From Mr. Kilty's authority, which he cites in support of it, "*Liber.* No. 2, folio 289," it must have been in some other book, than that containing the journal of this session, entitled, "Assembly Proceedings," &c; perhaps one in the land office.

† It was signed by seventeen members having one hundred and twenty-eight proxies, or voices, besides their own.

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1648.

"We the freemen assembled in this present general assembly do declare under our hands, and generally, jointly, and unanimously protest against all laws which are now pretended to be in force [since] the last general assembly, conceiving that they were not lawfully enacted, for that no summons issued out to all the inhabitants, whereby their appearance was required by lawful authority.—Witness our hands this 28th January, 1647."

This protest seems to have given much offence to governor Greene; who, accordingly, on the next day, entered his counter protest "against all such undue proceedings:"—as follows:

"January 29th, 1647.—Whereas the freemen assembled in this present general assembly have jointly and unanimously protested against all the laws enacted by the late governor deceased at a general assembly held by him at St. Inigoe's fort, on the 2d of January, 1646, as appears upon record under the hand of John Lewger, esq., secretary of the province, falsely pretending an unlawfulness in the said acts for want of due summoning the freemen of the province by a lawful authority.

"I, Thomas Greene, esq., his lordship's lieutenant governor for the time being, do absolutely protest against all such undue proceedings, and do hereby declare the aforesaid assembly held by the governor as aforesaid at the time and place aforesaid to be most lawful, and all acts therein assented unto by the freemen, and enacted by the governor aforesaid, to be laws of the province, as fully to all effects in law, until his lordship shall have signified his disassent thereunto, as any laws heretofore in the province have or ought to have been; and further I declare in the face of this present assembly, that I shall, to the utmost of my power, by virtue of his lordship's commission, given to me in that behalf, see the due observance of the same throughout all the parts of this province, until his lordship's disassent thereunto shall appear under his hand and seal as afore.

THOS. GREENE."

It seems an extraordinary circumstance, as has been before observed, that governor Calvert, immediately on his restoration to the government, should have taken up the same assembly which had been convened and sat under the authority of Mr. Hill; especially, if it was true, as stated by the assembly of 1649, in their letter to the lord proprietary, that most of the members of that assembly so convened by governor Calvert on his restoration, were disaffected to the lord proprietary's government, or personal enemies to governor Calvert. It seems pro-

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bable, from some subsequent proceedings in the province, that governor Calvert was anxious to avail himself of every circumstance favourable to facilitate his restoration to the province, and that to conciliate the minds of the disaffected he agreed to call the same assembly, which had before sat under the authority of Mr. Hill, under an expectation that they would assent to laws favourable to his permanent possession of the province. They appear, however, in the act entitled, "an act for customs," to have over-reached him; if the act was expressed, as stated in the subsequent act of 1661, ch. 6, that the assembly granted the customs therein mentioned to the lord proprietary "in consideration that his lordship would undertake to defray the whole charge of the government in war and in peace." If this meant more than to defray the charge of the expedition to recover the province, it was certainly an unreasonable stipulation and advantage taken of the governor under his embarrassed circumstances; for, in case of a war waged against or within the province by a foreign enemy, as the Indians for instance, the inhabitants ought to have borne the expense, presupposing always that the proprietary government was the only just and legitimate one, and the customs might not have been sufficient for such accumulated expense. It is difficult, however, to reconcile these suppositions with the preceding protest of this present assembly, and the earnest anxiety of the governor in his counter protest to "see the due observance" of the acts passed at that assembly of 1646-7. Those acts, particularly that entitled, "an act for customs," must have been beneficial to his lordship, or the governor, and indeed his lordship himself, according to the assembly's letter to him, (in 1649,) would not have manifested such an anxiety to sustain their validity. On the contrary, the people of the province must have conceived them unfavourable to their interests at this time, or the assembly of this session would not, thus unanimously to all appearance, have attempted to avail themselves of so frivolous an objection to the proceedings of that assembly in 1646-7, as the want of a legal summons appears to have been; and indeed the lord proprietary himself, in his commission of the 12th of August, 1648, (hereafter stated,) annexed to the body of laws then sent in by him, states it as a fact, "as he was informed," that the two acts of the session of 1646-7, principally perhaps the "act for customs," were "found too burthensome and inconvenient for the

CHAP. V. people." It is among these circumstances only that we can
 1648. trace the causes for the preceding protest.

Annexed to the proceedings of this present assembly of 1647-8, as they are on the record, appear some depositions, "taken in open assembly, 29th February, 1647," as therein expressed, for the purpose of proving the promise and agreement of governor Calvert, that all the charges and expenses of retaking possession of the province, particularly the "soldiers' wages," should be paid out of the lord proprietary's private estate within the province, and that governor Calvert agreed with the soldiers, that they should take "cowes, and heifers, and calves," at a certain price therein mentioned, "towards their wages."*

If this session of assembly continued to, and ended on, the fourth of March, as stated by Mr. Bacon, in his Collection of the Laws of this province, the journal thereof, as now remaining, is imperfect; for, nothing more appears of that journal at this day than what has been in substance herein already stated; except, that on "Thursday, 27th January," a committee was appointed to draw up a bill for the keeping of a garrison at Cedar point;" but no such bill appears on record.†—The titles of four other acts are stated by Mr. Bacon, as having been "passed on the fourth of March, 1647," at this session; which titles, he has probably collected from subsequent acts of assembly, whereby they were repealed; for, he subjoins to his statement of them the following—"N. B. I do not find the acts of this assembly any where recorded." The first and second of them, however, appear on the journal, as herein before stated. The one entitled "an act touching Pagans," confirmed among the perpetual laws of 1676, though afterwards repealed in 1678, did a copy of it now exist, might gratify philosophic curiosity in the investigation of the views, in which our ancestors were accustomed to consider the *Indians* of America, to whom, without doubt, the word "pagans" related. The last act also of this session, passed on the last day thereof, as it would seem, entitled "an act for settling government in the province as the present state of things will permit," would have thrown considerable historical light on the affairs of the province at this period of time; particularly the first clause thereof "touching soldiers' wages," which it seems

* See these depositions at large in note (LVIII.) at the end of this volume.

† The journal of this assembly, from which the preceding substance of it has been stated, is recorded in a book, now remaining in the council chamber, entitled "Assembly Proceedings from 1637 to 1658," p. 308 to 321.

was *dissented* to by the lord proprietary, probably on account of the pledge made by governor Calvert of both their private estates within the province as herein before stated. The third clause thereof also—"touching levies and judgments;" the fourth "touching officers' fees;" the fifth "touching oath of fealty;" were each of them in like manner *dissented* to; the two last "touching the defence of the province, and the fort at St. Inigo's," must have been temporary in their nature, and therefore expired when their uses ceased.

To close the session amicably, and to conciliate, if possible, the affections of all the inhabitants of the province after their late dissensions, we may suppose to have been the motives of governor Greene in an executive act or measure performed by him on the last day of the session—the fourth of March. On this day he thought it proper to issue his proclamation of pardon to every inhabitant residing within the province for any offence whatsoever committed by any of them from the fourteenth of February, 1644, unto the sixteenth of April then last past, and to every other person out of the province "acknowledging sorrow for his fault," and requiring pardon before the feast of St. Michael the archangel next, excepting Richard Ingle, mariner.*

Although the people of the province appear to have been now restored to a situation of apparent peace with each other; yet it would seem, that their natural enemies—the *Indians*, ever restless at the intrusion of Europeans upon them, were again exhibiting some symptoms of a disposition to invade the settled parts of the province, particularly those of St. Mary's. Governor Greene, therefore, thought it proper to issue a proclamation, about the latter end of May, giving notice of his having adjourned the court, then to be held in the beginning of June following, until the next October, assigning as a reason therefor, that in case of such intended invasion, of which he had received information, the attendance of jurors and others upon the court "would much weaken those parts from whence they came."† Whether this reason for this adjournment of the court was real or pretended, some doubts seem to arise, not only from the expression in the proclamation—"considering the danger of the present times," but also from the circumstance of the freemen of the county of St. Mary's actually meeting, about the middle

Proclama-
tion of ge-
neral par-
don.

Provincial
court ad-
journed,
and pro-
clamation
thereof
made.

* See this proclamation at large in note (LIX.) at the end of this volume.

† See this proclamation in note (LX.) at the end of this volume.

CHAP. V. of June, "to advise touching the levy of the charges incurred
 1648. this year." So that "the danger of the present times" might arise, not merely from the expected invasion of the Indians, but from other causes not now to be ascertained. It would appear to us at this day, that the meeting of the freemen to lay the county levy would have "weakened the parts from whence they came," as much as their attendance on the provincial court would have done. On this proceeding, however, for laying the county levy,* it seems necessary to remark, that it appears to be one of the first instances on record, where county charges were levied in a distinct manner from those which might be called provincial charges. It does not appear, that "the freemen of the county of St. Mary's" met together on this occasion as a *legislative* body, but in the same manner as has been long since usual, under both the provincial and state governments of Maryland, for the justices of the peace of a county to meet and lay the levy of their respective counties.

Affairs of
 England
 having re-
 lation to
 Maryland.

Connected as the affairs of a colony, especially in its most youthful state, necessarily must be with those of the mother country, and more particularly when under the government of a lord proprietary, whose residence and conduct in the parent state would have great influence and bearing on the affairs of his province, we are unavoidably often led, not only to pay attention to the political proceedings of the parent country, but to inquire also as to the part and conduct which such lord proprietary may have taken in those proceedings. But in this, as before observed, we have no source of information to recur to, except such few scanty materials as our provincial records afford; and in this respect they are totally barren of information. Scenes of as interesting a nature took place in England in the course of the summer of this year, (1648,) as any which had hitherto occurred since the commencement of the unhappy civil wars of that country. After the king had given himself up as before observed, to the Scotch army, in the year 1645, a general pacification, as to military affairs, seems to have taken place throughout England for some years. But "civil dudgeon" seems never to have ceased to rage. While there were church of Englandmen and papists to subdue, the two great fanatic sects—the presbyterians and independents conjointly exercised their powers against them. But, having laid them prostrate, the contest for

* See the record of this meeting in note (LXI.) at the end of this volume.

power necessarily commenced between themselves. The ma- CHAP. V.
1648.
 jority of the members of parliament were presbyterian, but the independents, with the cunning Cromwell at their head, had, by an artful "new model" of the army, secured them on their side. A military despotism ensued, and the army, that is Cromwell, dictated to the parliament whatever he was pleased to have done. Thus it always has been, and will be, under republican governments, except in the instance of some extraordinary chief, as Washington, whose virtue can controul his ambition. The presbyterians, thus unexpectedly bereft of power, began to grow restive and uneasy under their yoke. The Scotch presbyterians claimed a right in the person of their king, (who was now closely imprisoned in Carisbrook castle in the Isle of Wight,) as well as the people of England. To release his majesty from this imprisonment, ostensibly at least, they marched a considerable army into England, about the beginning of July in this year, 1648; but, although the royalists had risen in numerous bodies in different parts of the kingdom, so as to create a considerable diversion of the enemy from bringing all their force against the Scotch army, yet these presbyterians were so jealous of the church of England, and so anxious to get the king into their own power in order to dictate to him their beloved abolition of episcopacy, that they would not suffer the royalists to join them; and practised such delays in their march, as gave Cromwell time to collect his forces together. The consequence was, that after this *independent* leader had defeated the little royalist army under Sir Marmaduke Langdale, to whom the Scotch general refused any assistance, he so totally routed these Scotch presbyterians at Preston, in Lancashire, on the 19th of August this year, that not a man of them remained in England, except the killed, wounded, and prisoners.

What part the English Roman Catholics took in these scenes of this year, the histories of England do not particularly inform us. It is certain, that such were the prejudices against them among the ruling powers of that kingdom at this time, that they could not openly avow themselves as such, or at least they could not be openly patronized by any of the great religious parties. From the natural operations of gratitude, we ought to infer, that they would have favoured, as far as in their power, the cause of the royalists or church of England. But there is too much ground for suspicion, that a great portion of them had adopted

CHAP. V. the sinister resolution of remaining neutral, cherishing a vain
1648. hope, that as the independents *professed* a general toleration of religious sects, they would be in a better state under them than under the church of England. The state of Ireland at this time affords strong evidence of such a disposition in the Catholics. When the civil wars of this century first commenced in England, the Irish, as well as the English Catholics heartily, to all appearance, joined in support of the royal cause. But, through the clamour of the fanatic members of parliament—both presbyterian and independent, the king was obliged to enforce the laws against them more strictly than he had before done, in compliance with the wishes and indeed remonstrances of those sects. As soon as the two parties in England were arrayed in hostile armaments against each other, the Irish Catholics embraced this period as a favorable æra, for obtaining all that toleration if not ascendancy in Ireland, to which from their numbers they deemed themselves entitled. They formed armies, and instituted a national council of their chiefs or principal men, who sat at Kilkenny in Munster for the direction of their affairs. When the royal cause in England was on the decline, and the king himself became a prisoner to the English army, the Irish Catholics split into two parties. The more moderate of them, principally those of English descent, and especially the army of Catholics under general Preston, who commanded them in Munster and within what was commonly called the English Pale, were for adhering to the royal family of England. But those of Ulster under Owen O'Neale, a descendant of the old aboriginal Irish chief, Shan O'Neale, were for establishing a monarchy completely independent of England; when O'Neale probably flattered himself, that the crown might fall upon his head. In this the latter party were highly encouraged by the Pope's Nuncio—Rinuncini, who had been sent into Ireland, probably for this purpose, about October, 1645; and had ever since indefatigably continued to stimulate the Irish Catholics to every excess. A pamphlet was published by them, (in the year 1647,) to demonstrate,—“that the kings of England never had any right to Ireland; that, supposing they once had, they had forfeited it by turning heretics, and neglecting the conditions of pope Adrian's grant; that the old Irish nation might by force of arms recover the lands and goods taken from their ancestors by usurpers of English and other foreign extraction; that they should kill not only all the

Protestants, but all the Roman Catholics of Ireland who supported the crown of England; that they should choose an Irish native for their king, and throw off at once the yoke both of heretics and foreigners.”* CHAP. V.
1648.

In coincidence with this state of things in Ireland, even the queen of England herself, the unfortunate Charles's wife, who was now resident at Paris, had been constantly urging the king to give up the church of England and throw himself into the arms of the presbyterians, as the surest means of obtaining the zealous aid of the Scotch in regaining his crown.† She also prompted her son prince Charles, who had about this time, (in the summer of 1648,) took the command of a part of the English fleet, which had revolted from the parliament, to pay the greatest court to the presbyterians and abandon the church of England. The royal monarch, however, though closely confined in prison, stuck to his integrity and his religion, nor would he give them up, though to redeem his crown and his life.

This short sketch of the religious contests in Europe, at the period of time of which we are now treating, (for, the English civil war of this century was founded in religious contests merely,) is here given with a view of throwing some light on the otherwise obscure transactions of our humble colony. But we are still at a loss for the interesting information of the conduct of our lord proprietary amidst all these European scenes. When the subsequent attempt was made in 1656, to deprive him of his province, he was accused by the agents of the Puritans of Maryland then in England, “of practising with the king at Oxford and Bristol against the parliament;” which must have occurred, if at all, in the year 1643 or 1644; and that, from his special favour with the king, he had then procured two commissions; one, jointly to himself and his brother—the governor, relative to the trade of his own province, which, as is stated, “tended to the ruin of the parliament's interest;” the other, to himself solely, “concerning the customs in Virginia, which he was to receive under the king.”‡ From these circumstances we may infer, that lord

* Leland's Hist. of Ireland, vol. iii. p. 320.

† One proof of this arises from the circumstance, hereafter stated, of her sending Sir William Davenant, in the year 1646, from Paris to the king, when he was a prisoner to the Scotch at New Castle, in England, expressly for the purpose of persuading him to join the presbyterians and desert the church of England.

‡ See the document entitled, “A Paper relating to Maryland,” inserted at the end of this volume, taken from *Hazard's Collections*, vol. i. p. 623, who states it as from *Thurloe's State Papers*, A. D. 1656.

CHAP. V. Baltimore was by inclination attached to the king's cause and the real support of his crown ; but possibly, when the scene changed,—when Bristol was taken, and all the west of England was conquered by the parliamentarians, and the king had given himself up to the Scotch, and the prince of Wales was driven out of Cornwall into France, he might have thought with some other Roman Catholics of that time, that the destruction of the established church of England would be the resurrection of religious liberty to Catholics as well as dissenters.—Fatal deception !—However, agreeably to the dictates of prudence, we may suppose, that he now thought it proper to temporise. From several important documents sent by him to his province, which bear date at “ Bath,” in August of this year, 1648, we are induced to infer, that his present place of residence was in that city in England. It had been taken from the king's party, with all the rest of the west of England, in the summer of 1645. His lordship had probably, either for health or retirement, afterwards fixed his residence here ; and from hence dates his orders and regulations to his province of Maryland.

Governor
Greene re-
moved and
governor
Stone ap-
pointed in
his stead.

He had now, it seems, thought it proper to remove governor Greene, (whom his brother Leonard Calvert had originally appointed,) from the office of lieutenant general and governor of his province, and to appoint in his stead William Stone, esqr., who, as it seems, was then an inhabitant of Northampton county in Virginia, and who is moreover stated to have been “a zealous Protestant, and generally knowne to have beene always zealously affected to the parliament.”* Although the cause of the removal of governor Greene is hinted, in one of the papers of the agents before mentioned, to have been for some “matters *against* the lord Baltimore ;”† yet, as our provincial records present no explicit authority for supposing lord Baltimore to have entertained any serious dissatisfaction at the conduct of governor Greene,‡ particularly as he was placed first in the commission of

* So stated in Mr. John Langford's pamphlet, entitled, “A Refutation of a scandalous pamphlet, entitled, “Babylon's Fall in Maryland ;” both more particularly quoted hereafter.

† See the *Paper* entitled “A Breviat of the Proceedings of the Lord Baltimore,” &c. inserted at the end of this volume.

‡ It is proper to mention, however, that some allusion seems to have been made, in the assembly's letter to lord Baltimore, in 1649, (hereafter stated,) to some “indignation” entertained by lord Baltimore against “his *then* governor,” on account of the distribution of his lordship's *private* property in the payment of the soldiers. The *then* governor must have been governor Greene ; as it ap-

the council of the same date with that to governor Stone, we are CHAP. V.
warranted in relying upon the express inducement to that mea- 1648.
sure assigned in that commission to governor Stone, as being the *principal* cause of such a change in the office of governor: that is, that governor Stone "had undertaken in some short time to procure five hundred people of British or Irish descent to come from other places and plant and reside within our said province of Maryland." This large acquisition of numbers would have been, as is expressed in his commission, "an advancement of the colony;" and the investment of Mr. Stone in the office of governor might have been a *sine qua non* in some stipulations or agreement entered into between him and lord Baltimore to this purpose. It is possible also, that lord Baltimore, as before suggested, might have wished to temporise, and, in order to give the appearance of impartiality with regard to religious sects, thought it most prudent to appoint a "Protestant" governor, instead of Mr. Greene, (who, from subsequent documents, appears to have been a Roman Catholic,*) as well as a *Protestant* secretary of the province, (Mr. Hutton,) instead of Mr. Lewger, and also a *Protestant* majority in the council. As the reader will find this commission to governor Stone at large among the documents at the end of this volume, some few remarks will here be added only on those clauses of it, which appear to have created some considerable variances from the former commissions to the same purport.

After the usual revocation of all former commissions heretofore granted to any former lieutenant general or councillor of the province, this new commission proceeds in the appointment of William Stone, esqr., to be lieutenant general, &c., of the province, as also chancellor and chief justice thereof, assigning the reasons before mentioned for such appointment, with a special power, not before expressed in any former commission to the lieutenant general, of appointing and constituting all officers and ministers in the province, *excepting councillors* and such other officers as should be specially appointed by the lord proprietary;

Strictures
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Stone.

pears, that such distribution was made by Miss Brent, in virtue of her appointment as attorney in fact to lord Baltimore after governor Calvert's death. This transaction most probably was alluded to by the agents above mentioned in their expression of "matters against lord Baltimore."

* His name does not appear in the list of those *Protestants*, who signed the certificate of April 17th, 1650; which most probably would have been the case, had he been a *Protestant*, he being then one of the council.

CHAP. V. which *exception* might possibly have arisen from some former exercise of that prerogative of the lord Baltimore by either his brother or Mr. Greene.* 'The usual power also is given to him to call assemblies and *assent to laws*; but this last authority is clogged with closer restrictions than in any former commission. A proviso, annexed to this clause of power, restricts the lieutenant from assenting to the *repeal* of any laws already or hereafter to be enacted, and also from assenting to any law for the constitution, confirmation, or change of any officer, or to any law which shall impose any fine, forfeiture, or confiscation to any other use or uses than to the use of the lord proprietary, or to any law or laws which may any way concern *matters of religion*, constitution of parishes within the province, payment of tithes, oaths to be imposed or taken by any of the people in the province, treasons, matter of judicature, or any matter or thing which may any way infringe or prejudice any of the rights, prerogatives, or royal jurisdictions and dominions of the lord proprietary over and in his said province, "*without further and special warrant* from time to time under his hand and seal at arms first had and obtained, and published to a general assembly of the freemen of the said province or their deputies, and to be kept from time to time among the records of the said assembly there." Although this expression—"without special warrant,"—is rather obscure, yet it receives some elucidation from a document, which was sent by the lord proprietary, (and which will be hereafter stated at large,) bearing the same date and accompanying this commission to governor Stone; annexed to which document or "*commission*," as it is entitled in the record, was a copy of certain laws, "sixteen in number and written on three sheets of parchment," which laws or acts governor Stone was, by the last mentioned commission, directed to "propose" to the general assembly to be enacted by them. So that from hence it appears, that the lord proprietary had imprudently resumed his favorite and long cherished prerogative of *initiating* or propounding to his provincial legislature all laws, which were to be enacted by them. But this renewal of his old scheme did not succeed, as will soon be herein seen. We discern also, in this proviso, the lord proprietary's caution relative to "*matters of religion*," and to what

* But this clause,—"*excepting councillors*,"—seems to be in some degree repugnant to a subsequent clause in the same commission, whereby the governor was enabled to appoint *supernumerary* councillors, "*over and above those nominated by the lord proprietary's commission*," subject however to removal by the lord proprietary.

might look like an establishment of his own or any other sect of religion within the province, by the division of it into parishes and the payment of tithes. All which was done, without doubt, to avoid giving offence to the then ruling powers of the mother country. But he does not seem to have been equally prudent in the reservation to himself of rather an illegal stretch of prerogative in "imposing upon the people of the province" oaths of his own coining, without the intervention or assent of the provincial legislature; and it might be truly said,—*hinc lachrymæ!* for, from the imposition of the *oath of fidelity*, (accompanying certain conditions of plantation hereafter stated,) which he sent into the province, to be taken by every one before he could obtain a grant of lands within the province, principally (or at least ostensibly,) flowed all the bloodshed which subsequently ensued.

In this commission also was inserted an unusual special proviso, that before the said William Stone or any other lieutenant general should take upon himself that office, they should take the oath, entitled, "The oath of the lieutenant general or chief governor of the province of Maryland," annexed to the said commission. The oath of the lieutenant general hitherto used seems to have been only that, which was prescribed by the act of 1638, ch. 2;* which was very short and couched only in a few general expressions. It is probable also, that the lieutenant general being chief judge of the province by his commission, took also the oath of a judge prescribed by the same act. The lord proprietary, however, since the death of his brother and the perturbation of the times, had very naturally become more suspicious of his lieutenant generals, and to guard against any infidelity in their conduct towards him or his interests, he seems to have taken unusual pains in minutely dictating to them the duties of their office, which they were to observe under the obligatory sanction of an oath; and particularly in surrendering up the office, whenever he should call upon them so to do. It is remarkable also, that the lieutenant general, (who in this instance was a *Protestant*,) was to bind himself by this oath, that he would not directly or indirectly trouble, molest, or *discountenance* any person whatsoever in the said province *professing to believe in Jesus Christ*, and in particular *no Roman Catholic* for or in respect of his religion or in his free exercise thereof within the said province, nor would he make any difference of per-

A new
oath pre-
scribed to
the go-
vernor.

* See this oath of 1638 referred to before in p. 140, and at large in note (XXXII.)

CHAP. V. sons in conferring of offices, rewards, or favours, proceeding
1648. from the authority which his lordship had conferred upon him as his lieutenant, for or in respect of the said religion respectively, but merely as he should find them faithful and well deserving of his lordship, and to the best of his understanding endowed with moral virtues and abilities fitting for such rewards, offices, or favours; and, if any other person should, during the time of his being his lordship's lieutenant here, without his consent or privity, molest or disturb any person within this province professing to believe in Jesus Christ, merely for or in respect of his religion or the free exercise thereof, upon notice or complaint thereof made to him, he would apply his power and authority to relieve and protect any person so molested or troubled, whereby he might have right done him for any damage which he should suffer in that kind, and to the utmost of his power he would cause all and every such person or persons as shall molest or trouble any other person or persons in that manner to be punished."*

In this measure of his lordship we discern the commencement of that general toleration of all sects of religion, which prevailed under the early provincial government of Maryland, and which has been the subject of eulogium even to the present day. The excellent character which Cecilius lord Baltimore is said to have always borne, would prompt us to impute this proceeding to the most laudable motives—the liberal indulgence of all men in their religious opinions. But, whoever is acquainted with the history of Europe, during the seventeenth century, must know, that no genuine Roman Catholic at that time could entertain these liberal sentiments, or at least openly avow them. All Protestants were deemed by them—heretics, and liable to the strong arm of persecution for their impious and presumptuous doctrines. We must, therefore, unavoidably confess, that this liberal and tolerant measure of lord Baltimore, wears very much the appearance of that policy of conduct, just herein before alluded to, which the English Catholics are accused of having pursued, that is, of joining the two great fanatic sects—the presbyterians and independents, in their united endeavours to effectuate the destruction of the church of England:—this, under the

* The reader will find the above mentioned commission to governor Stone, and the oath of the lieutenant general, both at large in note (LXII.) at the end of this volume.

vain expectation, that, whichever of these two sects should at-
tain the supremacy, the Catholics would meet with greater tole-
ration from them than they had before experienced from the En-
glish church. Perhaps also, it partook strongly of that prudent
policy, which his lordship seems to have aimed at, in tempo-
rising and balancing between these two great rival religious
parties.

With the foregoing commission to a new lieutenant general, A new
his lordship sent also a new commission for "his privy council of commis-
state," as it is therein expressed; in which none of the former council.
councillors appear to have been reappointed; but Mr. Thomas
Greene, the former governor, was now the first named in this
new commission of the council. The rest were "captain John
Price, Thomas Hatton our secretary, John Pile, and captain
Robert Vaughan." A small change in this new commission is
also observable, that the lieutenant general or governor of the
province is not named as one of the council, as he invariably was
in the former commissions. The reason of this might possibly
be, that, as the lieutenant general was directed by his commis-
sion "to advise with the council," the offices of councillor and
lieutenant general might be now considered as distinct, though
formerly, in case of the lord proprietary's arrival and presence in
the province, as was contemplated, the lieutenant general would
have been only a councillor to his lordship without any new com-
mission for that purpose. In this new commission also was in-
serted a *proviso*, that before any of the councillors therein men-
tioned should presume to act as such, they should take the oath
annexed to the said commission; in which oath was also inserted
a clause, similar to that of the lieutenant general before stated,
relative to the religious liberty of all sects of the christian religion,
and particularly of that of the Roman Catholics. It is worthy
of notice here also, that not only the lieutenant general Stone,
but all of the councillors appointed by this new commission, ex-
cept Mr. Greene and Mr. Pile, were *Protestants*,* but of what
denomination of Protestants we have no authority to determine.†

His lordship appears to have sent in from England these re-
spective commissions, by Mr. Thomas Hatton, with whom most
probably he had held consultations at his residence in Bath in
Mr. Hat-
ton sent
in as secre-
tary.

* This appears from the declaration and certificate of the principal *Protestants*
of the province, of the 17th of April, 1650, hereafter stated.

† See this commission of the council and the oath thereto annexed, in note
(LXIII.) at the end of this volume.

CHAP. V. peace to hold a court of sessions of the peace with him the commander.*

1648.

Sixteen laws sent in with a commission for propounding them to the assembly.

Concomitant with the preceding commissions another very important one of the same date, (the 12th of August,) was sent in by his lordship, directed "to the lieutenant general, to all the councillors, and to the freemen or their deputies in their general assembly within the province." To this commission were annexed certain acts or laws, sixteen in number, written on three sheets of parchment, each sheet being signed by his lordship, and all three, jointly together with the commission, having the impression of the greater seal at arms affixed unto them, as described in the commission. The lieutenant general is directed by the commission to propose these laws to a general assembly of the freemen of the province or their deputies, "and in case the said freemen or their deputies or the major part of them in any such general assembly within the said province should, within twelve months after the date thereof, give their consent, that all and every of the said acts or laws, jointly contained in the said three sheets of parchment thereunto annexed, should be enacted for laws within the said province by his lordship or lieutenant there for the time being, in his lordship's name, in such manner and form as they are there written or drawn, *without any alteration, addition, or diminution to them or any of them*, in that case and not otherwise his lordship thereby declared his assent to them and enacted them as laws, and at the same time declared his disassent to all and every law which had been heretofore enacted."† We have before observed upon this bold stride of his lordship towards something like arbitrary power, in reserving to himself the sole prerogative or exclusive power in legislation of *initiating* or propounding all laws to be enacted by a general assembly. He had once or twice before attempted this measure without success; and we can account for his repetition of it again at this unpropitious period of his affairs, upon no other ground than that he thought it absolutely necessary in order to secure to himself all his provincial rights.‡ It is sufficient here to observe, that this attempt was as unsuccessful in the

*See this commission at large in note (LXVII.) at the end of this volume.

†See this commission for propounding the laws sent, in note (LXVIII.) at the end of this volume.

‡A mode of colonial legislation, similar to the above of lord Baltimore, was attempted by the English government not very long after the restoration, in 1678, to be imposed on the island of Jamaica, but finally relinquished. See it herein before stated in note (VII.) at the end of this volume.

sequel as any which he had before made. What these laws were, or what were their merits or demerits, we are in no way enabled to determine; as they do not appear at this day on our records in the form in which they were sent. It would seem, however, that some of these laws, now sent in by his lordship, were "chosen and selected out" by the next assembly, (to wit, of April, 1649,) and enacted for laws; some of them probably in the form in which they were sent, others with considerable emendations or alterations, especially those which were subsequently confirmed by his lordship, and particularly that remarkable one entitled "an act concerning religion," as may be fairly inferred from its obvious consonance with the tenor of the preceding commissions and oaths of office so far as they relate to that subject.

As a concluding part of the system of government now adopted by his lordship in his new organization of the affairs of his province may be mentioned another commission, bearing date the twentieth of August of this year; which, although it is a few days posterior in date to those just before stated, yet may be fairly presumed to have accompanied the rest, of which Mr. Hatton appears to have been the bearer. It was annexed to certain new *conditions of plantation*, which in the record bear no date, but are referred to, both in the first mentioned commission of the sixth of August to governor Stone as lieutenant general before stated,* and in this last mentioned one of the twentieth of August annexed to the said conditions, as bearing date "the twentieth day of June last past." This apparent incongruity of dates may be easily reconciled by supposing that these *conditions of plantation* were drawn up, and signed and sealed by his lordship, on the twentieth day of June as expressed, but were not dispatched or sent to America until the execution of the commission of the twentieth of August annexed to them, soon after which last date we may suppose Mr. Hatton to have left England.

The most prominent part of these *conditions of plantation*, principally on account of its being supposed to have been in a

* A small error may be here observed upon in Mr. *Killy's* Landholder's Assistant, p. 43, where he gives an "extract of commission to William Stone as lieutenant general, dated the 17th August, 1648."—It should have been the *sixth* of August, as herein before appears. The word "*seventeenth* year of our dominion," in the commission, might, on a cursory view of it, have occasioned the mistake.

CHAP. V. great measure the occasion of the succeeding civil war in the
1648. province, and therefore deserving of historical notice here, was the seventh clause or *condition*, whereby it was required, that “every adventurer or planter that shall have any land granted unto him by virtue of these conditions, before any grant be delivered to him and before it shall enure to his benefit, shall take within the said province the *oath of fidelity* to his lordship and his heirs lord and proprietaries of the said province *hereunto specified*.” The *form* of this “oath of fidelity,” as here prescribed by his lordship, of which a “specification” or copy was sent, must have been that now remaining on the provincial records immediately following the said conditions of plantation. It purports, at the end of it, to have been “given at Bath under his lordship’s hand and greater seal at arms the 20th day of June, 1648;” agreeably to the reference made to it in the commission annexed to the said conditions, as also in that to the lieutenant general. As this *oath of fidelity* will subsequently require more particular animadversion, when we come to those times, in a few years hence, when it was held up by the discontented party as an evil of great consequence and highly oppressive to their consciences, the objectionable parts of it need not be here commented on. It may, however, be proper to remark on the commission annexed to these conditions, that heretofore it seemed to have been the policy of lord Baltimore to confine the admission of adventurers or colonists into his province to those, who were of British or Irish descent, but now by this commission the lieutenant general was authorised to make any person or persons of *French, Dutch, or Italian* descent, who were already planted or should thereafter come and plant in the province, capable of the said last conditions of plantation and of receiving grants of lands therein. This liberality seems to have flowed, principally perhaps, from his lordship’s anxiety to increase the population of his province, but also from his now manifest indifference as to what sect of the *protestant* religion his colonists belonged.*

Although the preceding commissions all bear date prior to the last of August, 1648, yet it appears from our provincial records, that they either were not sent from England, or did not arrive in Maryland, or were not opened and published to the

* The reader will find these conditions of plantation, with the commission thereto annexed, and the oath of fidelity subjoined, in note (LXIX.) at the end of this volume.

people there during the remainder of that year. From several documents on record Mr. Greene must have continued to act as governor until the beginning of April, 1649, as all those documents have his name as lieutenant general annexed thereto.

Among the most remarkable of these were several relative to a quarrel between governor Greene and captain Robert Vaughan, at this time commander of the isle of Kent, by virtue of his commission of the 18th April, 1647, before stated.* Captain Vaughan had ventured, as it seems, at divers times, in his dis-

CHAP. V.
1648.
Quarrel
between
governor
Greene
and cap-
tain Vau-
ghan.

course on the isle of Kent, where he was commander, to speak of governor Greene in a very disrespectful manner, using "scandalizing and upbraiding speeches" of him, and taxed him with partiality in the distribution of justice. For this governor Greene had brought an action against Vaughan, probably in the provincial court at St. Mary's, and moreover, by virtue of his powers as governor of the province, issued his proclamation, which he sent up to the isle of Kent, and which bears date at St. Mary's on the eleventh of November, 1648, giving notice, that he thereby suspended and revoked all power and authority of command upon the said isle of Kent from captain Robert Vaughan, commander of the said island, and, in the same proclamation, authorised Mr. Philip Conner, one of the commissioners, (that is, a justice of the peace,) of the said county of the isle of Kent, to issue forth all writs and processes necessary for the administration of justice there, and directed him to bind all parties interested over to the provincial court at St. Mary's, there to have tried and determined their suits and causes until further order, finding it necessary, (as he alleged,) for the present to suspend all further power of judicature upon the said island. By a commission also of the same date, directed "to Mr. Henry Morgan, high sheriff of Kent county," (the isle of Kent,) he committed unto him, and added unto his office of high sheriff, the command of all the militia of the said county. The issue of this quarrel seems to have been rather unfavourable to the character of Mr. Vaughan, as it appears to us at this day; for, having come down to St. Mary's, he, on the 9th of December, 1648, before the governor and other parties present, acknowledged and confessed, that the charges he had made against the governor were "foul and rash, and altogether false," and "humbly required forgiveness for such his said misdemeanors, expressing sorrow

* See before, p. 304.

CHAP. V. therefor, with purpose of amendment. Whereupon the governor
 1648. withdrew his action and pardoned the offence." The governor seems to have been so completely satisfied with and reconciled to captain Vaughan, that he agreed to reinstate him in his office of commander of the isle of Kent, and for that purpose in a few days afterwards issued his proclamation, bearing date the 11th of December, 1648, reappointing the said captain Vaughan as commander of the isle of Kent, with all the power and authority upon the said island according to his former commission granted unto him from Leonard Calvert, esq., late governor, bearing date at Kent, 18th of April, 1647; and further, "for special reasons him thereunto moving," he thereby suspended all power and authority from all the assistants or commissioners joined with the said captain Robert Vaughan in the aforesaid commission of 1647, (Mr. Philip Conner only excepted,)* and in their room constituted and appointed Mr. Nicholas Brown only, so that captain Vaughan, Mr. Philip Conner, and Mr. Nicholas Brown were to hear and determine all causes upon the said island according to the commission aforementioned. From this act of the governor in removing the former commissioners or justices of peace, appointed in 1647, it may be inferred, that great discontents with Mr. Greene's government or the lord Baltimore's proprietaryship had then subsisted in the isle of Kent, and that the governor, on his reconciliation with captain Vaughan, had found much cause of displeasure against the justices of peace of that island under the former commission.†

Question,
as to the
right of
forfeitures
for treason,
accruing
within a
manor.

About this time, towards the close of the year 1648, a proceeding took place in the provincial court held at St. Mary's, which, as it is explanatory of the nature of manors in Maryland, many of which lord Baltimore still continued to have laid out within his province, requires to be mentioned here in its proper place, although it has been before touched upon. As the real estates of several persons, engaged in the late rebellion, had been forfeited for their *treason*, particularly some of the estates held by the tenants of certain manors, which had been granted to Mr. Leonard Calvert, and which manors must have been now in the possession or occupation of his administratrix,—Miss Margaret Brent, the lady before mentioned, she, claiming these *forfeitures* as accruing to the estate of Mr. Leonard Calvert, the

* See before, p. 304.

† The documents relative to this quarrel between governor Greene and captain Vaughan are inserted in note (LXX.) at the end of this volume.

late lord or owner of these several manors, thought it most prudent to have the opinion of the provincial court, relative to that claim. Her application for that purpose is thus entered on our provincial records: CHAP. V.
1648.

“December 7th, 1648.—Came Mrs. Margaret Brent, and required the opinion of the court touching the patent of Mr. Leonard Calvert, in the case of the tenements appertaining to the rebels within his manors;* whether or no their forfeitures belonged to the lord of the manors:

“The resolution of the court was, that the said forfeitures did of right belong to the said lord of the manors, by virtue of his lordship’s conditions of plantation, the said rights usually belonging to the lords of manors in England; and that the words in the patent expressed, viz: all *commodities, advantages, emoluments, and hereditaments* whatsoever, (royal jurisdiction excepted,) included the same.”†

The *conditions of plantation*, referred to in this record, were most probably those of November 10th, 1641, and not those last stated of 1648: inasmuch as the commissions last mentioned of this year, 1648, as before observed, either had not as yet arrived in the province, or they had not yet been published, so as to supersede either the former commissions or the former conditions of plantation. In that clause of the conditions of 1641, wherein his lordship directs the grants of manors, they were to “be conveyed by grant *with all such royalties and privileges as are usually belonging to manors in England.*”‡ But, as the governor and council, composing the provincial court at this time, were probably not lawyers, and seem here to have given an extrajudicial opinion without litigation, and therefore probably without argument before them, it may not be presumptuous to entertain doubts of the legality of their adjudication. For the reasons before stated,§ forfeitures for *treason* did not usually belong to the lords of manors in England; but to the king. So that the court, assuming a mistaken principle as the groundwork of their decision, were led also into an erroneous construction of the

* There were three manors, all of them probably in St. Mary’s county, which had been granted to Mr. Leonard Calvert, to wit, Trinity manor, St. Gabriel’s, and St. Michael’s. It is probable that the forfeitures above mentioned arose in some or all of these manors.

† “Council Proceedings from 1636 to 1657,” p. 215.

‡ See these conditions, &c. at large, in note (XLIII.) before referred to, at the end of this volume.

§ See the latter part of note (IX.) before referred to, at the end of this volume.

CHAP. V. *patent* or patents, by which each of these respective manors were
 1648. granted to Mr. Leonard Calvert,* to wit, that the words—"all commodities, advantages," &c. included the right to forfeitures for treason; and omitted due attention to the *exception* therein,—
 "royal jurisdiction excepted," which reserved the *royal* right to forfeitures for treason.

Affairs of the mother country in relation to Maryland. The materials for our Provincial History now fail us for some months. In the mean time the chasm may be filled up by resorting to those interesting and important transactions, which had now taken place in the mother country. The efforts, which had been made in divers parts of England by several insurrections in behalf of the royal cause, during the year 1648, having been suppressed, and Cromwell having returned from Scotland, where, pursuing his before mentioned victory over the Scots, he had marched and had effectually settled every thing to his wishes, the army, under his command, now returning and approaching the environs of London, reassumed their dictatorial power over the parliament, and began again to prescribe to them such ordinances and acts as comported with Oliver's ambitious schemes. During his absence, indeed, in Scotland, and the existence of the late temporary insurrections, the Presbyterians, who still composed a majority of the members, had held up their heads, and had made something like an effort to negotiate with and restore the monarch to the throne. The independents, however, with Oliver at their head, and the army at their heels, took a very summary and effectual remedy to suppress these ebullitions of royalty exhibited by the Presbyterians. Two regiments of soldiers, under the command of a colonel *Pride*, on two several days, (the 6th and 7th of December, 1648,) environed the house of commons, arrested and imprisoned all the Presbyterian members, to the number of about two hundred, and completely *purged* the house, as they merrily termed it, of all its Presbyterian acidities. Oliver, and his military independents, were now completely masters of the English nation, with a subservient parliament of their own species to fetch and carry such ordinances and acts, as should be pointed out and dictated to them. This artful leader now began, if he

* The word "patent" here in the record could not refer to lord Baltimore's patent for the province, no such expression as above—"all commodities," &c. being in that patent; commonly called the charter of the province. The word "patent" must therefore refer to some one of Mr. Leonard Calvert's patents for his respective manors.

had not before, to entertain his ambitious schemes of his own personal elevation. What an awful and useful lesson is here taught to the friends of civil and political liberty! The most critical periods in the histories of republics are generally at the conclusion of a war, especially a civil one. A military chief, who happens to have been uncommonly successful, sees his way so clearly at such a period to the assumption of the supreme power of the State, that it is impossible for human nature to resist it. Cromwell was not made of that kind of conscientious stuff, as your Washington, to boggle and hesitate at schemes inconsistent with honour and rectitude. He was clogged with no such delicate principles. Masked with the vizar of religious hypocrisy, and backed with a well disciplined army of twenty thousand men, his vaulting ambition saw no impediments to a very sure leap to the throne. The dethronement of the monarch became necessary to effectuate this, and no means to accomplish that desirable incident appeared so secure as the cutting off his head. Through the instigation of Cromwell the army demanded, that the king should be brought to justice; and accordingly, within a little more than a month he was tried, condemned, and executed. The English constitution, so often the theme of foreign panegyrists, was now completely abolished; and the remaining members of the house of commons, consisting entirely of independents and anabaptists, assuming the name of *parliament*, voted, and afterwards enacted, "that the kingly office should be abolished as unnecessary, burdensome, and dangerous, and that the state should be governed by the representatives of the people in a house of commons without king or lords." They also made choice of thirty-nine persons to form a *council of state*, or an executive council, for the administration of public affairs under the parliament.

These were the important changes and revolutions of affairs, which had taken place in the mother country, prior to that period when our provincial records again afford us some grounds on which we may proceed. The first subsequent transactions of any importance on record commence with the opening of the next session of assembly, on the second of April, 1649; by which time the before mentioned transactions in England might have been known in Maryland, and have had some operation in producing those changes within the province, which we are now about to recite. Whether this session was an adjournment or prorogation of the last, which ended on the fourth of March,

Session of
Assembly.
1649.

CHAP. V. 1647-8, or whether it was a new assembly called by summons,

1649. agreeably to the common usage heretofore practised in the province, we are not enabled to determine, as no journal of the proceedings thereof are extant upon record: except the laws which were now passed at this session. Neither are we enabled to determine, when the new organization of the government, intended by the last mentioned preceding commissions of 1648, was commenced and carried into execution, for no *memoranda* or other record of the qualification, by oath, of governor Stone or the other officers thereby appointed, now appears. Yet it seems to be certain, that governor Stone was now, at the commencement of this session, acting in his capacity of lieutenant general or governor of the province; so that the assembly was most probably convened by him or under his authority. Among the "council proceedings" a *memorandum* is still on record, relative to all the records of the province, which were properly to be in the custody of the *secretary* of the province, that seems to throw some light on the obscurity of this period. It is as follows:—

Anno, 1649, memorandum, That I, Thomas Hatton, by virtue of my commission from the right honourable the lord Baltimore, of being his lordship's secretary of the province, did, upon the 2d day of this present month, being the first day of the assembly, receive into my custody this book of entries, before the governor and council then met together; this being the 9th day of April, anno domini, 1649.

"16 April, Mr. William Bretton, with his own hand in the house of assembly, delivered to me *this book*, and another lesser book with a parchment cover, divers of the leaves thereof being cut or torn out, and many of them being lost, and much worn out and defaced, together with divers other papers and writings bound together in a bundle: And then, upon the delivery of them, made oath, That these were all the books of record, papers, draughts, precedents and other writings that he had, could come by, or know of within this province, which belonged to the secretary or register of this province, their office or officers: except some warrants, and some draughts of Mr. Hill's time, and some few other papers of little consequence; which he promised to deliver me ere long.

"Testor, THOMAS HATTON, *Secr.*"*

* Taken from the book in the council chamber entitled "Council Proceedings from 1636 to 1657," p. 219.—See it also in Bacon's *Preface* to his collection of the Laws of Maryland.

It may be remarked on this document, that, although it now CHAP. V.
1649. appears entire, as above, in one record book, in the council chamber, yet the two paragraphs thereof were evidently made at two different times;—the first on the second day of April, and the other on the sixteenth; and moreover relate to two different books delivered at the two different times therein specified; and must have been therefore originally so distinctly entered in the two distinct books so distinctly delivered, most probably in the first and blank pages of each of them. It is to be inferred also from these *memoranda*, that the two oldest books now extant, relative to the first proceedings of the government of the province, to wit, the one entitled, “council proceedings from 1636 to 1657,” and the other “assembly proceedings from 1637 to 1658,” are only fair transcripts from those books now delivered to Mr. Hatton; and that the former is a copy of that delivered on the second of April, in the presence of or “before the governor and council then met together,” and the latter, of that delivered on the sixteenth of April in the house of assembly.

We may fairly infer also, from the delivery of these records to Mr. Hatton at these specified times, particularly from that delivered on the *second* day of April, “being the first day of the assembly,” that Mr. Hatton had not entered on the duties of his office, as secretary of the province, prior to that day; which carries with it some presumption also, that the whole of the new organization of the government had been purposely postponed to this first day of the sitting of the assembly—the second of April, when we may suppose governor Stone, the new members of the council, and the other officers now invested with new commissions, qualified themselves for their respective offices by taking the several oaths prescribed by each, as before stated.

As no journal of the proceedings of this session now remains, we are left to judge of those proceedings only from the legislative acts or laws of this assembly still extant on record. It appears, from the enacting style of these laws, viz.—“By the lord proprietary, with the assent and approbation of the *upper* and *lower* houses,” &c., that the assembly was now, at this session, for the first time, actually divided into two distinct and separate houses, and sat, as we may suppose, in two distinct and separate apartments or buildings. But how the same was effected does not appear, there being no record extant of any *proceedings* of this assembly, except those of their last day of sitting to receive

CHAP. V. the report of the committee for settling the public charge, and of
 1649. a *letter* from the assembly to his lordship.* It will be recollected,

that a motion was made by Mr. Robert Vaughan, (then a burgess for the isle of Kent,) at the July session of 1642, "that the house of assembly might be separated, and the burgesses to be by themselves, and to have a negative;" which motion failed on account of the opposition to it by the governor—Mr. Leonard Calvert.† Mr. Vaughan was now one of the council, and consequently a member of the *upper* house; but whether the motion for the same purpose was now renewed by him, or by some other person, we are no where informed. It appears to have been the opinion of the very judicious compiler of the Laws of Maryland, just referred to, that the adoption of this measure at this session, "was probably *at the desire of the freemen*, from their former application to that purpose," through Mr. Vaughan. It may be remarked, however, that there was in this measure at this time some small deviation from the proceedings of the *Puritans* in the mother country. There they had voted, on the fifth of February preceding, within a few days after they had put the king to death, that "a *house of lords* was useless and dangerous," and "that the state should be governed by the representatives of the people in a *house of commons* without king or lords." It must be confessed, that our provincial politicians shewed greater wisdom in the adoption, than the English parliamentarians did in the abolition, of those wholesome "checks and balances" of the old English constitution; as our independent states have, by their general conduct in the formation of their governments, clearly demonstrated.

Remarks
 on the acts
 of this ses-
 sion.

We may now proceed to a short review of the several most important acts of this session, as throwing considerable light on our provincial history at this era. The first of them entitled, "an act concerning religion," seems particularly to attract attention, and has furnished to many writers, even of modern date, very plausible grounds for eulogium on the first Roman Catholic settlers of Maryland. There is, however, much to blame as well as to commend, when we impartially examine its different parts. The preamble of it sets forth rather a questionable principle. "Forasmuch as in a well governed and christian commonwealth matters concerning religion and the honour of God

* So stated by Mr. Bacon, in his Collection of the Laws of Maryland.

† See before, p. 216.

ought in the first place to be taken into serious consideration and endeavoured to be *settled*, Be it therefore ordained and enacted," &c. This goes far in contending for the constitutional power in the legislature to erect, by laws made for the purpose, an *established* religion of the state; and accordingly we find, from the perusal of the history of these times, that nothing was further from the thoughts of either the *Puritans* or *Roman Catholics*, than that men should be allowed to entertain what religious opinions they thought proper. They were both for destroying the established religion or Church of England, and setting up in its stead, not a general toleration of all religious opinions, but their own sect or system, and then to put down by force all others. The principle should be in every "well governed commonwealth," not to legislate upon *religion* at all, not even for the incorporation of any religious sect whatever; and then only can *religious liberty* be said to exist.*

CHAP. V.
1649.

The first section of it contains a horrible disproportion between the crime and the punishment. To punish *blasphemy* with *death* and confiscation of property, would be now deemed such an outrage on religious liberty, that, beyond a doubt, such a law could not at this day be executed in Maryland.

The second section is in some degree liable to the same objection just made to the first, although certainly the disproportion between the crime and the punishment is not so great. The alternative punishment—*whipping*, in case of non-ability to pay the fine, would not comport with our democratic principle of legislation; which is, in all cases to favour the poor man. It would be improper to pass over unnoticed in this place a frivolous objection, formerly made to this section of this act of assembly, within a year or two after its passage; and it will be best stated in the words of the author, from whose book or pamphlet the fact is derived.†

"This act was passed by a general assembly in Maryland, in April, 1649, and assented unto by the lord Baltimore in 1650;

* Prior to any further remarks on this act, the reader is referred to it at large in note (LXXI.) at the end of this volume.

† As we are now about to enter into the statement of several facts, the knowledge of which is more particularly derived from two very old pamphlets, printed and published in England as far back as in the year 1655, (MSS. copies of which are now in my possession,) and as the citation of them will be frequently necessary, it will be proper to give in this place a short account of them. After the civil war, battle and bloodshed, (which will be hereafter related,) had taken place in the province in the year 1654, between the friends of lord Balti-

CHAP. V. and the intent of it being to prevent any disgusts between those
 1649. of different judgments in religion there, it was thought necessary to insert that clause in it concerning the *Virgin Mary*, of whom some otherwise might perhaps speake reproachfully, to the offence of others. And in the time of the long parliament when the differences between the lord *Baltimore* and colonell *Samuel Matthews*, as agent for the colony of *Virginia*, were depending before a committee of that parliament for the navy, that clause in the sayd law, concerning the *Virgin Mary*, was at that committee objected as an exception against his lordship; whereupon a worthy member of the sayd committee stood up and sayd, that he wondered that any such exception should be taken against his lordship; for (says hee) doth not the scripture say, that all generations shall call her blessed?* and the committee insisted no more on that exception."

That adoration may with propriety be paid to the *Virgin Mary*, seems to have been always a *tenet* of the Roman Catholics; and this motion in the committee of parliament is a confirmation of the remark, which we have just before made, that the *Puritans* had not the least intention of granting religious toleration to the Roman Catholics, though it is certain that some good Catholics were beguiled into that opinion and acted accordingly with the *Puritans* in the destruction of the church of England.

more and the *Puritans*, who had settled at Providence, now Ann Arundel county, as before stated, each party became anxious to justify themselves in the view of the *lord protector*, (Oliver Cromwell,) and the then ruling powers of England. Accordingly a pamphlet was published in London, in the year 1655, by one Leonard Strong, in behalf of the *Puritans*; entitled,—“*Babylon’s Fall in Maryland: a fair warning to lord Baltimore; or a relation of an assault made by divers Papists, and popish officers of the lord Baltimore’s against the Protestants in Maryland, to whom God gave a great victory against a greater force of souldiers and armed men, who came to destroy them.—Published by Leonard Strong, agent for the people of Providence in Maryland.—Printed for the author, 1655.*”—The other pamphlet, purporting to be an answer to the former, was entitled, “a just and clear refutation of a false and scandalous pamphlet, entitled *Babylon’s Fall in Maryland, &c.* And a true discovery of certain strange and inhumane proceedings of some ungrateful people in Maryland towards those who formerly preserved them in time of their greatest distresse. To which is added a law in Maryland concerning religion, and a declaration concerning the same. By *John Langford*, gentleman, servant to the lord Baltimore.—Hee that is first in his owne cause seemeth just, but his neighbour commeth and searcheth him. *Prov.* 18, 17.—Whose hatred is covered by deceit, his wickednesse shall be shewed before the whole congregation. *Prov.* 26, 26.—London, printed for the author, 1655.” The quotation here inserted above in the text is from the pamphlet last stated.

* The author here cites in the margin, “*Lu.* 1. 48.”

By the third section,—“Persons reproaching any other within the province by the name or denomination of heretic, schismatic, idolater, puritan, independent, presbyterian, popish priest, jesuit, jesuited papist, Lutherean, Calvinist, anabaptist, Brownist, anti-nomian, barronist, round-head, separatist, or any other name or term,* in a reproachful manner, relating to matter of religion, were to forfeit ten shillings sterling for each offence, one half to the person reproached, the other half to his lordship: or, in default of payment, *to be publicly whipped*, and suffer imprisonment, without bail or mainprise, until the offender shall satisfy the party reproached by *asking* him or her respectively *forgiveness* publicly for such offence before the chief officer or magistrate of the town or place where the offence shall be given.” To judge correctly of the propriety of such a law, as this third section comprises, the supposition should be made, that there existed a law of Maryland at this day, which imposed a penalty precisely similar to that just rehearsed, especially the whipping and asking forgiveness, on every person within the state who should reproach another by the name or denomination of whig or tory, federalist or anti-federalist, aristocrat or democrat, monarchist or jacobin;—what would be its operation and effect? It would probably be remarked, that it would be an assumption of intolerable despotism to legislate so minutely on human actions, or rather on *words* or language.

The fourth section, providing against a breach of the “Sabbath or Lord’s day, called Sunday,” under a penalty of *whipping* for a repetition of the offence, demonstrates that *puritanism* was now strongly diffusing both its sentiments and language into the province. The terms—“Sabbath, or Lord’s day,” were never in common use among Roman Catholics, nor indeed with members of the church of England;† and dancing parties, so common in Catholic countries as an innocent amusement on a Sunday evening,

* In reading over this list of hard *names*, we cannot but be forcibly reminded of *Butler’s* inimitable description of these times in the opening of his poem, entitled, *Hudibras*.

“When *hard words*, jealousies, and fears,
Set folks together by the ears,
And made them fight, like mad or drunk,
For dame *religion*, as for punk.”

† In New England, about this time, a religious scruple prevailed against calling the first day of the week Sunday; on account of its supposed idolatrous origin; and the “Sabbath, or the Lord’s day,” was the common phrase.—See Hutchinson’s *Hist. of Massachusetts*, vol. i. p. 377.

CHAP. V. would assuredly have been considered by the Puritans as "un-
1649. civil and disorderly recreation ;" and therefore within this legislative prohibition.

The fifth and last clause of this act, (deserving attention,) against "the inforcing of the conscience in matter of religion," is that part of it, which has principally attracted notice, and occasioned much eulogium on a Catholic government for this example of its liberality and disposition to toleration in matters of religion. But, from all the circumstances herein before mentioned, if this law was one of those "selected" by the assembly out of the "sixteen in number," as before mentioned, sent in by his lordship, as it would appear to have been, the credit, to be derived from the liberality of this clause, is certainly due to lord Baltimore himself, and not to the Roman Catholic inhabitants of the province generally. There are moreover strong grounds to believe, that the majority of the members of this assembly of 1649 were *Protestants*, if not Protestants of the *puritanic* order. It has been before stated, that governor Stone and a majority of the members of the council were Protestants. There are strong reasons for a supposition that a majority of the members of the other house of assembly were Protestants also; inasmuch as they certainly were at the next session of 1650. We may then fairly presume, that the governor and council sitting with the lower house at this session, (for they were not yet divided into two houses as at the next session,) made a majority of Protestants. The acts of this assembly, therefore, were the legislative proceedings of *Protestants*; but, although they rejected the body of laws sent in by lord Baltimore, as will presently be seen, yet they themselves acknowledge, that they "selected" out of that body, many of the laws which they passed at this session; and from the "certificate" of the Protestants, made in 1650, which will be hereafter stated, it may be inferred, that the "act concerning religion" was, in substance at least, one of those sent in by his lordship. The remarkable conformity also of this act to the commission and oath of the lieutenant general prescribed by his lordship, as before stated, with respect to a general toleration of all sects of christians, contributes to corroborate the supposition, that this remarkable act of assembly was *initiated* by the lord Baltimore himself; and, as it emanated originally from him, so ought he personally to have the greatest credit of it, whatever his motives for it might have been. The

error, (as it appears to be,) of a learned annalist,* where he says, CHAP. V.
1649. in his encomium on this act, that this assembly of 1649 was “composed chiefly of Roman Catholics,” has propagated the opinion, generally adopted, that this act of religious toleration proceeded from a Catholic government; an opinion certainly incorrect as to those who now administered the *Maryland* government, since unquestionably the governor and most of the council were Protestants, (of the old church of England perhaps,) and, in all probability, a majority of the assembly were so, with some few Puritans mixed with them.† The act of assembly may be said, indeed, to have been a political measure of a Roman Catholic nobleman, and so far the Roman Catholics are entitled to all the credit which may accrue to them from this measure of an individual of their sect. But, without the slightest endeavour to detract from the personal merit of Cecilius, lord Baltimore, it may be safely maintained, that the history of affairs throughout the British empire in Europe, at this period of time, clearly demonstrates, that this measure of general religious toleration, now adopted by his lordship, flowed rather from a prudent policy than any personal disposition to a general religious toleration. The Catholics throughout England and Ireland were evidently now endeavouring to make their peace with the Puritans, who held the reins of power. Even good church of England-men were daily becoming converts to them, or temporising; and these fanatics were now pouring their members, like an inundation, throughout every the remotest branch of the British dominions. The lord proprietary had adopted, almost at the first commencement of the population of his province, the

* *Chalmers's Annals*, p. 218.

† While writing the above, (having just taken up a newspaper—the *National Intelligencer* of November 12th, 1816,) I have accidentally perused therein an account of a speech of a Mr. O'Conner at a “Catholic aggregate meeting,” then lately held at Cork in Ireland, wherein the orator indulges himself, as usual, with many rhetorical flourishes on the British persecutions of the Irish Catholics, and by way of proving the general disposition of Roman Catholics to religious toleration, when they are in power, adduces the example of the early Roman Catholic government of *Maryland*. How far this was really the case, has been herein stated above. It is essential to the utility of history, that such an important measure as this should be set right, and the world no longer imposed upon. For evidence of the disposition of Roman Catholics, as a *sect*, to grant toleration to other religious sects, the reader may be referred to the history of Ireland throughout the seventeenth century, and, indeed, to that of the greater part of Europe under Roman Catholic government, during that period, except France, where philosophy and that pure system of religion denominated Deism had disarmed or mitigated the horrible powers of an *inquisitorial* tribunal.

CHAP. V. measure of admitting persons of every sect, without discrimination, to become inhabitants of his province; and it was not, therefore, now possible for him to avoid its necessary consequences. The government of Virginia was now also ferreting out from their hiding places all the Puritans, who lurked within that ancient dominion. Maryland, unfortunately for his lordship, became an asylum for most of them. The inhabitants of this province now formed a heterodox mixture of almost every christian sect. To keep peace among them a general toleration was obviously the only prudential measure to be adopted.

The next act of this session, in the order in which they have been arranged by the best compiler of the laws of Maryland,* is that entitled “an act for punishment of such as shall counterfeit the lord proprietary’s, or his heirs’ lords and proprietaries of this province, great seal of this province.” Such an act seems to have been necessarily required by the introduction of a new great seal of the province, instead of the one purloined by Ingle and Clayborne; and which new seal had been sent in by the lord Baltimore as before mentioned and described.

The next act, entitled “an act concerning purchasing lands from the *Indians*,” is a law, as to its principle, of general utility even at this day. The principle, upon which it was founded, seems to have been adopted by the United States in the disposition of all the territories conquered or purchased by them from the Indians. For every or any individual to have been allowed to purchase lands from the Indians wherever and for whatever price they chose, would have been a liberty of most mischievous policy. And this consideration, as before observed, at once demonstrates the futility of Clayborne’s claim to the isle of Kent. He wishes to retain the possession of it, under a mere purchase from the Indians, without the expense or trouble of obtaining a patent for it from the representative of the nation—the monarch, who had, as congress has under our republic, the sole *right of purchase* from these aborigines of the country. The substance of the act, (being abridged and condensed,†) is as follows:—
“The preamble recites, that divers persons have heretofore pur-

* The laws of this session remain recorded in different books and in different orders of succession to each other. As no journal remains, there is no possibility of determining which were first introduced into the house; nor is it material, each of them having relation to a different subject. They were all passed on the same day, to wit, on the 21st of April, the last day of the session; and are here commented upon in the order in which Mr. Bacon has placed them.

† As it is in Mr. *Bacon’s* Collection of the Laws of Maryland.

chased or accepted of lands, &c., from the *Indians*, and made use of and possessed the same, without any lawful title and authority derived from the lord proprietary, neglecting also to take out grants from his lordship, under the great seal, for such lands as have been due to them by virtue of his lordship's conditions of plantations, or other warrant from his lordship, which proceedings are not only very great contempts and prejudice to his lordship's dignity and rights, but also of such dangerous consequence, if not timely prevented, that they may hereafter bring a great confusion in the government and public peace of this province. *Be it therefore enacted by the lord proprietary, with the assent and approbation of the upper and lower house of this assembly, &c.*—(1.) All purchases or acquisitions whatsoever, of any lands, &c., within this province, made or to be made, from any person whatsoever, not deriving at the same time a lawful title thereto, by, from or under his lordship or his heirs, under the great seal, shall be void and null.—(2.) It shall be lawful for his lordship to enter upon, seize, possess, and dispose of any such lands, &c., so purchased or acquired from any *Indian* or other, at his will and pleasure, unless such purchaser, at the time of such purchase or acquisition, have some lawful right or title to such lands, &c., by some grant from his lordship, &c., under the great seal.”

It is not impossible, but that these attempts to purchase lands within the province from the *Indians* had been lately made, under a supposition, that from the late important political changes, which had recently taken place both in England and Maryland, there was a probability, that lord Baltimore would in a very short time be deprived of all right of propriety in his province, and consequently of the right of making grants of lands therein. We shall see hereafter, that some such conjectures were now afloat in both Virginia and Maryland. Apprehensions of such an event must have dictated to lord Baltimore's friends within the province, or have caused them to assent to such a very severe law as the act of assembly of this session, next in order after that just mentioned, entitled, “an act for the punishment of certain offences against the peace and safety of the province.” By this act, “all mutinous and *seditionous* speeches, practices, or attempts *without force*, tending to divert the obedience of the people from the lord proprietary of this province, or his heirs, or the governor under him for the time being, and proved by two sworn witnesses, shall be liable to be punished with imprisonment

CHAP. V. during pleasure, not exceeding one whole year, fine, banishment,
 1649. boaring of the tongue, slitting of the nose, cutting off one or both ears, whipping, branding with a red hot iron in the hands or forehead ; any one or more of these as the provincial court shall think fit.—(2.) All mutinous or *rebellious* speeches, practices, or attempts *with force*, either against the person of the lord proprietary now being or his heirs, or of his or their governor of the province for the time being in his or their absence out of the province, or against any the forts, dwelling houses, or guards, provided for the safety of their or any of their persons, or *for the publishing, establishing, or advancing any other right or title to the propriety or dominion of this province than the right or title of him the said lord baron of Baltimore* ;—and all accessaries (*afore* such force, and proved by two sufficient witnesses as aforesaid,) to such speech, practice, or attempt, shall be liable to be punished by loss of hand, or *by the paines of death*, and confiscation of all lands, goods and chattels within the province, banishment, imprisonment during life ; any one or more of these as the provincial court shall adjudge ; and all accessaries *after* to such speeches, practices, or attempts (with force) shall be liable to be punished in such manner as in that clause which is provided for mutinous speeches and practices *without force*.”

It must be allowed, that this act of assembly armed the judiciary authority of the province with an extensive power ; but we must suppose, that none of these severe punishments could have been inflicted but by the regular intervention of a trial by jury and legal testimony. The proprietary government of the province was now in the most imminent danger ; and if that was to be considered as necessarily confounded with *the safety of the people*, this *supreme law* might have reasonably dictated such a harsh legislative act. Inasmuch as the forms of law and judicial proceedings were still preserved, the act of assembly admits of stronger justification than the extraordinary and *summary* powers with which our *councils of safety* in Maryland, at the time of our revolution, were armed with, or than our modern proclamations of martial law and occasional suspension of the writ of *habeas corpus* ; or, in the worst sense of it, may be placed upon an equality with that notorious Maryland act of assembly of 1777, “to punish certain crimes and misdemeanors and to prevent the growth of toryism.”

The next act, deserving notice, is that entitled, “an act touch-

ing Indians.” The cause of making this act was, according to CHAP. V.
1649. the preamble thereof, “to the end that no breach of peace may happen betwixt the neighbouring Indians and the inhabitants of this province.” By this law it was made felony, punishable with death, (though without forfeiture of estate,) “to take, entice, surprise, transport, or sell any *friend* Indian.” From this it would appear, that a species of the offence called *kidnapping*, in relation to Indians, must have had some existence at this time within the province. But it is difficult to conceive, how this offence could have prevailed to any great degree; especially if such Indians, so “taken” and “surprised,” were “transported” and “sold” out of the province as *slaves*. The holding *Indians* in slavery had never attained to a general usage within the province, nor indeed, as it would appear, in any of the British colonies as yet planted.* If they were transported and sold at all, they must have been sent to some of the Spanish colonies in America, among whom, as we are informed, in some instances, the slavery of *Indians* was allowed. There was another clause in this act, which does not appear to have had much connection with the former part of it, though highly useful and necessary. A forfeiture of 1000 lb. of tobacco was to be imposed on any person, who should deliver any gun or ammunition to any *Indian*. This had been frequently provided against before.

The act of this session, entitled, “an act touching hogs, and marking of cattle, appears to have been the first act, relative to the subject, made in this province. The uncultivated and uninclosed state of the country must have dictated its utility. It was then the usage, as it is at this day, for neighbouring planters to turn their hogs and cattle promiscuously into the adjoining wood or forest. This necessarily produced a practice for every planter to affix some mark on the animal so turned out, in order to ascertain his ownership. This act, after imposing a

* There is, however, in this act of 1649, “touching Indians,” a short clause, by way of *exception* to the tenor of the act, thus expressed:—“Andrew Ouza-mazinah, being now *servant* to Mr. Fenwick, is hereby excepted from this law.” But, supposing *Andrew* to have been an *Indian* in the *service* of Mr. Fenwick, it does not necessarily imply, that he was a *slave for life*. He might have *indented* himself as a *servant* to him for years, for some cause not explained. Subsequent acts of assembly, however, demonstrate that the holding Indians in slavery within this province had been deemed lawful, but probably they must have been Indian *enemies* captured in lawful war. The above act against *kidnapping* Indians, was re-enacted in the act of 1715, ch. 16, sect. 6, which seems to be in force at this day. The act of 1717, ch. 13, seems to have recognized “Indian *slavery*,” as then lawfully existing.

CHAP. V. heavy fine upon any person, who should "steal, wrongfully kill,
 1649. or carry away any marked swine of another man's," very properly added the following provision :—"And all the inhabitants of this province are required, by virtue of this act, to bring in their several marks of hogs and other cattle, and cause them to be recorded before Michaelmas next, upon peril of such censure as the governor and council then present or other judge shall think fit." This latter clause, though neglected, as it would appear, yet was deemed of so much importance, that "an order" was made by the assembly, at their next session, 1650, "for recording the mark of cattle and hogs," nearly in the same words as the preceding act, adding in a more particular manner, where such marks should be recorded, to wit: "in the secretary's office, or in the records of the county court where every such inhabitant liveth." The act, however, was subsequently repealed, and the order has become *obsolete*;* nor does it appear to have been ever revived, except by the act of 1692, ch. 32, which also was repealed. So wholesome an ordinance, relative to the internal police of the state, ought not to have been disused.

The next act also, entitled "an act for planting corn," was a renewal of that temporary policy frequently before resorted to in the early settlement of the province, in order to guard against a scarcity of food in the articles of bread stuff; a remedy borrowed from a similar police in Virginia. By this act, two acres of corn were to be planted and attended to for every *taxable* person on the plantation.

From documents annexed to this volume, consisting of a letter or address, by this present assembly now sitting, to the lord proprietary in England, and his reply thereto, it will be seen, that his lordship had (very improperly as it would appear to us at this day,) considered it as a great offence, that some of his personal property on his own plantation in St. Mary's county, consisting (as the assembly express it in their letter to his lordship) "of a few cattle, not above eleven or twelve cows at the most, of your lordship's known clear stock, and those conquered again to your lordship and taken from the unlawful possessor, should be distributed among those men, who had ventured their lives and estates in the defence, recovery, and preservation of your lordship's province." It has been before stated, that governor Calvert, while in Virginia, through want of other means,

* So stated by Mr. Bacon, in his Collection of the Laws of Maryland.

as we may presume, to pay the soldiers, whom he had enlisted and engaged to attend him in the recovery of the province, had expressly pledged to the soldiers, that "their hire and wages" should be payed out of the stock or personal property upon his lordship's plantation. In virtue of this engagement the above mentioned cattle of his lordship had been either sold for the payment of, or distributed among, the soldiers, as promised. This was done, most probably after the death of governor Calvert, by Miss Margaret Brent, who being appointed administratrix to the governor's private estate, was invested also, as has been before stated, with the same powers as governor Calvert had been, to manage his lordship's private estate as his attorney in fact. With Miss Brent's conduct in this respect his lordship, it seems, was excessively displeased, and expressed against her "bitter invectives." The assembly, however, in their spirited letter and address, generously defended her, and added, as a very strong reason, "that the soldiers would never have treated any other with that civility and respect; and, though they were even ready at several times to run into mutiny, yet she still pacified them." This does great honour to the character and understanding of this lady, and is one, among numerous examples to be found in history, where power lodged in female hands, if prudently exercised, is more readily obeyed and submitted to than the same would have been if administered by one of the other sex. There is a chivalrous disposition in citizens as well as soldiers, to obey the commands of women. His lordship, it seems, had expressed his displeasure at the these proceedings in a *letter*, which had been most probably written by him to governor *Greene*, but which letter does not appear to be now extant, at least on our records. The assembly, however, animadvert upon this letter in the following spirited terms:—"Hereupon we cannot choose but wonder, why your lordship should write so tartly against the people, and how your lordship could suppose it fit and necessary, that those your loyal friends should be deprived by law of their dues for so great and good a service done and effected by them, and that it should be required at their hands, to *pay themselves a levy upon themselves*." A very just remark, if we suppose that these soldiers became afterwards the citizens upon whom the assessment, for the payment of the soldiers, was to be levied.

Previous mention of these few circumstances seems to have been necessary, in explanation of the next act of assembly of

CHAP. V. this session, entitled, "an act for the support of the lord pro-
 1649. prietary;" which act seems to have been really and truly intended as a conciliatory earnest of the loyal and faithful desire of the people of the province to remain under his lordship's proprietary government, however exceptionable they deemed many parts of his late conduct towards them, upon which they animadverted in their letter to him at the close of this session in terms of rather keen resentment. The preamble of the act, however, is couched in the following very soothing language:—"That his lordship might better perceive the good will of the freemen, in complying with his lordship as far as their poor distracted condition could well bear, and to the end that he might be the better encouraged and enabled to protect them in their lives, liberties, and estates, "they gave, by this act, a custom to his lordship of 10s. per hundred on all tobaccos* shipped upon any *Dutch* vessel, and bound for any other port than his majesty's, for seven years, on forfeiture of all tobaccos chargeable with custom transported or attempted to be transported afore discharge had under the hand of the governor: one-half to be yearly employed towards satisfaction of all arrears and claims touching the late recovery and defence of the province, which should be brought into the secretary's office and made appear to be due, before the last day of March ensuing, &c. And an assessment also to be raised, on all the inhabitants for his lordship's use, for

* The reader will perceive, on perusing the letter of this assembly to his lordship at the close of this session, a considerable variance between the amount of the customs granted, as expressed in the act above mentioned, and their statement of it in that letter. Instead of "ten shillings per hundred on all tobaccos," as above mentioned, they state in their letter, that they had "passed their consent to a law, that his lordship and his heirs, for seven years, should have a custom of 10 lb. of tobacco upon every hogshead of tobacco laden upon any *Dutch* vessel," &c.—There is no other act of this session extant, to which they could have referred. The abridgment of this act, as above, was copied from Mr. Bacon's Collection of the Laws, and not from the record of the act at large: but he is uniformly so accurate, that it is supposed, safe reliance may be placed in almost every instance upon the correctness of his statements. It must be acknowledged, that "ten shillings per hundred," amounting to *five pounds* per hogshead, supposing the hogshead to have been of 1000 lb. weight, as usual formerly, is such an enormous imposition, as to induce us to suppose some mistake in the copying, either by Mr. Bacon or in making the present record of the act. Were it correct, it might well justify Mr. Chalmers, (*Annals*, p. 218,) where, following Mr. Bacon in his statement thereof, he remarks,—(intending it, perhaps, as a side blow against the American revolution,)—"Thus history seems to demonstrate, that rebellions, in superaddition to all other evils, never fail to entail grievous burdens on the unfortunate countries, which they had previously cursed."

replacing his lordship's former stock of cattle distributed and disposed towards the defence and preservation of the province," &c. CHAP. V.
1649.

This act affords strong evidence of the state of the foreign trade existing at this period of time between Maryland and Europe. The *Dutch* nation must have monopolized the greater portion of the tobacco trade now carried on, not only with Virginia but Maryland also. This, most probably, was occasioned in a great part by the perturbed state of England, so as to exclude regular communications with the mother country. To break up this trade, however, the parliament, in the course of the next year, (1650,) as we shall see, made that strong *ordinance*, "for prohibiting trade with Barbadoes, Virginia," &c., whereby they asserted and maintained their sovereign supremacy over the colonies; and in the succeeding year, (1651,) their celebrated navigation act.

It may be proper to mention in this place, that some doubts seem to have existed soon after the passage of this last mentioned act of assembly, how far the expression—"touching the late recovery and defence of the province,"—extended the "arrears and claims" to be satisfied by these customs. Accordingly, among the laws of the next session, (April, 1650,) "an explanation of a clause in the act of 1649," bearing date "April 29th, 1650," appears recorded; consisting first of a "declaration," (as it is called,) under the hands of ten gentlemen,* who were all most probably members of the last assembly, either of the upper or lower house, and who state therein, that they "verily believed, that the intention of the whole house then was, that these words in the laws, viz: Touching the late recovery and defence of the province, was only meant thereby, that those soldiers who came up in person with governor Calvert, deceased, out of Virginia, and those other, who were hired into the fort of St. Inigoe's for the defence and preservation of the province and government reassumed by him, and other just arrears incurred during the said time in that fort, should be satisfied by virtue

* The names of these gentlemen were—William Stone, (the present governor,) Thomas Greene (the late governor,) John Price, Cuthbert Fenwick, William Bretton, John Hill, Thomas Hatton, Robert Vaughan, George Manners, and Robert Clark. Of these, Messrs. Stone, Price, Hatton, and Vaughan were among the "*Protestant* inhabitants," who signed the *Protestant's* "declaration and certificate" but a few days before, on the 17th of April, which will be hereafter stated.

CHAP. V. of that act, and no others." Annexed to this certificate, is the
 1649. following order:—"29th April, *predict*. It is thought fit by both houses of this present assembly, that the act above mentioned be understood and judged upon according to the intentions expressed in the declaration above written."

The remaining clause in this last mentioned act of 1649, relative to "an assessment, for replacing his lordship's stock of cattle," seems to have been a generous mode of reproaching his lordship for his sad complaints for the loss of his "few cattle, not above 11 or 12 cows:"—complaints, as they appear to us at this day, highly derogatory from his lordship's elevated character. In pursuance of this disposition in the assembly to replace his lordship's stock, there appears next in the list of laws of this session, "An order, touching the lord proprietary's stock of cattle," which prohibits them "from being carried out of the province, until his lordship's pleasure be further known."

The unceasing restlessness of the unfortunate aboriginal natives of our continent, at the manifest progress which Europeans were even then making in their territories, appears to have been a constant source of unceasing uneasiness also to the early settlers of Maryland. Since the first settlement of the province scarcely a session of assembly had past without some necessity of providing by law against the natural hostilities of the Indians. Accordingly, at this session also, there appears among the laws, a legislative "order,"* entitled, "an order of assembly for the defence of the province, as the present times will permit." It seems to have been designed as a sort of militia law; whereby the inhabitants of every hundred in the province were to be assembled at stated times in the year, by an officer, to be appointed by the governor, called the *commander* of the hundred, for the purpose of making "such orders and ordinances as they shall judge meet and necessary for the defence of each particular hundred." It regulates also, the mode of communicating any alarm, by what they call—"rounding," that is, by the discharge of three or more muskets, which every master of a family was to answer

* Among the laws both of this and the next session, there occurs several with the title of "orders," although they had really and truly all the force, operation, and extent of *acts* of assembly. These *orders* appear to have been expressly assented to by the freemen of both houses, and *concurred* in by the governor; and have, therefore, all the formalities of *acts* of the legislature. It appears to have been a loose mode of legislation practised by our early colonial legislators without much meaning, except perhaps that such order was meant only as a *temporary* expedient.

by the like number of guns, and so communicate the alarm CHAP. V,
1649, through the hundred and from one hundred to another throughout the province. It further ordered, that no inhabitant should go out of the limits of the plantation where he resided, not even to church, without being well armed; and that every master of a family should provide sufficient arms and ammunition, not only for himself, but for his servants and sojourners at his house.*

Connected with the preceding order "for the defence of the province," the assembly subjoined another, entitled, "an order providing for the smith." As there has been some small mistake in the purport of this act of assembly, or order, by writers on the affairs of Maryland, at this period of time, it may be proper to state the preamble and substance of it. It recites, that "whereas there is an urgent and pressing necessity, as the present times require all the inhabitants of this province *to have their arms ready and well fixed*, upon all occasions and accidents, which may unexpectedly happen, which will not be effected with that willingness and so speedily as is required, unless the *smith* shall be in some means assured of his pay,"—the order then authorizes him to take a "specialty," or obligation, from all his employers, and that "he shall have execution granted him thereupon at such time as the specialty shall be due, and tobacco payable, for all *such arms so fixed* only without further trouble or judgment." An inference has been drawn from this, "that at this time the most common and useful arts must have made but small progress in the colony."† Although it is certain, that few of the "common and useful arts" had, as yet, made much progress in any of the British colonies in America at this early period, yet it must be observed, that the premises here did not warrant the above conclusion or remark. At this day, throughout these flourishing United States of America, an *armorer* is a kind of *smith* not commonly to be met with but in the larger cities.

* As this order, or rather act of assembly, gives an interesting portraiture of the situation of our early colonists, in relation to the Indians at that period of time, it is thought worth inserting herein at the end of this volume in note (LXXII.)

† This remark was originally made by Mr. *Chalmers*, (in his *Annals*, p. 221,) and copied from him by others. It is evident, that Mr. *Chalmers*, not being able to have recourse to the act at large, has made his inference from the *title* of it only, as it is in Mr. *Bacon's Collection*; and has supposed it to relate to a common *blacksmith*, necessary for repairing implements of agriculture; whereas it provided for an artist of a superior kind, commonly denominated a *white smith*, or more properly an *armorer*,

CHAP. V. We have thus traced nearly all the legislative acts of this session of assembly, and in the absence of other documents that would be useful in forming a judgment of the state of the colony in this year, have been obliged to be more minute in the detail of these acts than perhaps may be thought necessary.* There still remains, however, one more proceeding of this assembly deserving attention: and is more important, as it exhibits the *political* state of the colony at this time more clearly than any other document now on record. Although no journal of the session, as before observed, now exists, yet there still remains on record, prefixed to the document just referred to, the following *memorandum*.

The assembly's letter to the lord proprietary.

“Saturday, the 21st of April, 1649, being the last day and sessions-day of the assembly, a letter was read, to be sent to his lordship, and signed by the whole house present.—The governor dissolved the house.”

Whether this assembly was composed principally of Roman Catholics or Protestants, although, as before suggested, the probability seems to incline to the supposition, that the *majority* consisted of the latter, yet it must be acknowledged, that the spirit of this letter, which they now addressed to his lordship, was for the most part, respectful, wise, temperate and just. He had certainly given them some cause of displeasure in refusing a moderate compensation, at his own private loss, to the soldiers, who had accompanied his brother, and regained the province for him; and, perhaps also, in assuming again his old relinquished prerogative of *initiating* or propounding a *system* of laws to be adopted or rejected *in toto* by the assembly without amendment or alteration. He had also erred, (according to a principle of legislation now generally received, in multiplying *oaths*, of uncommon length, to be taken by his officers and the inhabitants of the province; and on this point, the forcible yet delicate request of the assembly deserves repetition.—“We do further humbly request your lordship, that hereafter such things, as your lordship may desire of us, may be done with as little *swearing* as conveniently may be; experience teaching us, that a great occasion is given to much perjury, when *swearing* becometh common. Forfeitures, perhaps, will be more efficacious to keep men

* Such extracts from the laws of this session of 1649, as have been herein inserted, were copied either from Mr. Bacon's Collection, or from the original books to which he has therein made reference.

honest than swearing. Oaths little prevail upon men of little conscience.” On the subject of his “body of laws,” sent in by him, after mildly setting forth their reasons for not accepting them altogether, but only selecting a few of them, they further thus express themselves.—“We do humbly request your lordship hereafter to send us no more such bodies of laws, which serve to little other end, than to fill our heads with suspicions, jealousies, and dislikes of that, which verily we understand not. Rather we shall desire your lordship to send *some short heads* of what is desired, and then we do assure your lordship of a most forward willingness in us to give your governor all just satisfaction, that can be thought reasonable, by us.” It must be acknowledged, that this was the best and safest foundation, upon which his lordship’s desired prerogative of propounding laws to his province, could have been placed.*

This letter, or address, was most probably transmitted to his lordship in England, soon after the rising of the assembly; for, we find, immediately succeeding it, as it now stands on the record, a paper entitled—“His lordship’s declaration, *anno* 1649;” which, evidently from its contents, was meant as his lordship’s reply to the assembly’s letter; and, being without the date of any month, was probably written and sent soon after his lordship’s receipt of the address, and within the present year. In this “declaration,” or reply, his lordship after stating, that the unwillingness of the assembly to consent to his “body of laws” was occasioned chiefly, “as he was informed, and had much cause to believe, by the *subtle suggestions*” of some, who ought rather to have assisted in promoting a good correspondence, than in raising and cherishing any jealousies or discontents between him and the people, mentions, that the chiefest pretended “exceptions” against these laws were, as he was informed, contained in the “act of recognition,” and in that for the oath of fidelity.† These “exceptions” or “subtle suggestions” arose from two expressions in these acts, to wit,—“absolute lord and proprietary,” and “royal jurisdiction.” These expressions, as his lordship states, were “stumbled at” by some of the assembly, who seemed to doubt, that the former words—“absolute lord and proprie-

* See this “Letter” of the assembly at large in note (LXXIII.) at the end of this volume; to which is added his lordship’s “Declaration” in reply thereto.

† From this we may infer, that two of the laws sent in by his lordship, were similar to, if not the same, in substance at least, as two under those titles passed at the subsequent session of assembly, of April, 1650, as will be hereafter seen.

CHAP. V. tary," would infer *a slavery in the people* of the province to lord
 1649. Baltimore, and that the latter words—"royal jurisdiction" exceeded the power intended to be given to him by his charter. His lordship then proceeds, after protesting against any such odious and sinister interpretation, and "calling God to witness that he had no intention to enslave the people there by them or any other way whatsoever," he appeals to the whole body of laws themselves to clear him from such intentions with all well meaning men; and then enumerates the several provisions of those acts sent in by him. There was provision made, he said, "for freedom of conscience :—for freedom from taxes, except such as should be laid with the assembly's consent :—for freedom from martial law, but only in time of camp or garrison, and within such camp or garrison :—for freedom from being compelled in any kind to contribute to any war out of our said province without the consent of the assembly :—for freedom of trade with the Indians, upon reasonable conditions tending more to the public good and tranquility than to our advantage."† As to the other words, "royal jurisdiction," he declares, that it was intended by his charter, that he should have all such jurisdiction over his province as the bishops of Durham at any time heretofore *ever had in temporalls* within the county palatine of Durham in England, and that he had been satisfied, by learned counsel there, (in England,) and by such as were best read in antiquities, that the bishop of Durham, before Henry the eighth's time,‡ had and did exercise all "royal jurisdiction" within the said bishoprick or county palatine.

This opinion, relative to his lordship's proprietary powers over

* This seems to corroborate a suggestion herein before made, that the "act concerning religion," passed at the session of 1649, was one of those "selected" by the assembly from his lordship's body of laws.

† The most of these several subjects were subsequently provided for by several acts passed at the next session of April, 1650; and this circumstance seems to justify the inference, that those acts of assembly, of the session of 1650, thus providing for the same matters, as above stated by his lordship, and as comprehended in his body of laws, were actually "selected" from his lordship's system; as will appear more plainly when we come to the laws of the next session.

‡ In the book, in which "his lordship's declaration, anno 1649," now stands recorded, the expression is—"Henry the 7th, his time."—But as no statute is to be found in the *Statutes at large* in Henry the seventh's reign, which relates to the subject and statute of Henry the eighth, (27 Hen. 8, ch. 24,) is mentioned by all law writers, who treat upon the subject of *counties palatine*, as the only statute abridging those "royal jurisdictions," it is evident, that the numerical figure 7 in the record is erroneous and ought to have been 8.

his province, thus derived from "learned counsel" in England, CHAP. V.
1649. and thus vouched by his lordship, is essentially necessary towards a clear understanding of the nature of his lordship's proprietary government. A county palatine (*comitatus palatinus*) is said to have been so called from the words *à comitatu et a palatio regis*; because the owner thereof had in that county *jura regalia*, as fully as the king had in his palace. He might pardon treason, murders, and felonies; he appointed all judges and justices of the peace; all writs and indictments ran in his name, as in other counties in the king's; and all offences were said to be done against his peace, and not, as in other places, *contra pacem domini regis*.* The county palatine of *Durham* is said to have been so by prescription or immemorial custom; or at least as old as the Norman conquest, and long prior to the statute of 27 *Hen. 8* c. 24, alluded to in his lordship's declaration, the bishop of *Durham* exercised therein all those prerogatives just mentioned.† But Henry the *eighth*, in his rage for reformation, after he had been provoked to it by the pope, sat about to reform not only *religious* institutions, but such *political* establishments as might possibly counteract his domineering temper. Accordingly, the statute of 27 *Hen. 8*, cap. 24, entitled, "An act for recontinuing liberties in the crown," was made; whereby the powers before mentioned of owners of counties palatine were abridged; though still, in the county palatine of *Durham*, (the only one remaining in the hands of a subject,—the bishop,) all writs are witnessed in his name, and all forfeitures for treason by the common law accrue to him.‡ This statute, however, seems to have been construed as not extending to the province of Maryland; because, as would appear, the expressions of the statute confine its operations to such "liberties" only as existed within the realm of England and principality of Wales. But it is probable, that this objection to his lordship's "royal jurisdiction," (of which every inhabitant must have been apprised before he colonized himself within the province,) ran deeper than what his lordship supposed, when he thought their objection was founded upon the supposition, that the assumption of "royal jurisdiction" by him, was contrary to his *charter*; whereas, there is greater probability, that this objection to his "royal jurisdiction" emanated from the same *republican spirit*, which had de-

* Coke's 4 *Inst.* 204-5, and 1 *Bl. Com.* 117.

† 1 *Bl. Com.* 116.

‡ 1 *Bl. Com.* 118.

CHAP. V. stroyed the monarchy in England, and, now diffusing itself into
 1649. the minds of some few Puritans within the province, began to exercise its animosities against every thing that looked like monarchy under a colonial government.*

The first
 settlement
 of the Pu-
 ritans at
 Provi-
 dence, now
 Annapolis.

This naturally leads our attention to another important incident, which occurred within the province during the present year. The Congregational (or Independent,) church, which had been privately founded in Virginia in the year 1642, as before stated,† and which had probably by secret meetings, notwithstanding the laws against them in Virginia, contrived to keep up a conventicle of their members for some years, had, in the year 1648, increased so much in numbers, (to one hundred and eighteen, as it is said,) as to attract the attention of the government of that colony to a more rigorous execution of the laws against them. Their conventicle in Virginia was therefore broke up, and the members of it, being driven out of that colony, were dispersed in different directions. The pastor of it (a Mr. Harrison,) went from thence to Boston in New England, in the latter end of the year 1648,‡ and the elder of it, (Mr. Durand,) unfortunately for lord Baltimore, took refuge in Maryland. With him, or soon after, a considerable number of the members of their church, among whom Mr. Richard Bennet, (afterwards governor of Virginia and one of the commissioners for reducing Maryland,) is said to have been one, emigrated to Maryland.§ This is stated by one of their own members, to have

* This seems to be corroborated by one of the reasons set forth by Mr. Leonard Strong, in his pamphlet, (before cited,) entitled, "Babylon's fall," &c. where he says,—"This oath," (meaning the oath of fidelity herein before mentioned,) "was very scrupulously looked upon: first, in regard it bindes to acknowledge and be subject to a *royal jurisdiction* and *absolute dominion* of the lord Baltimore, and to defend it and him against all power whatsoever. This was thought far too high for him, being a subject, to exact upon such terms as it was exacted," (that is, of having no grants of land without it,) "and too much unsuitable to the *present liberty*, which God had given the English subjects, from arbitrary and popish government; as the lord Baltimore's government doth plainly appear to be."

† P. 199.

‡ Hutchinson's Hist. of Massachusetts, vol. 1, p. 147. Holmes's Annals, vol. 1, p. 347.

§ Mr. Bennet is particularly mentioned by Mr. John Langford, in his Refutation of "Babylon's fall," &c., as one of the Puritans who emigrated to Maryland, but as Mr. Bennet is not mentioned in the records of Maryland until he came as a commissioner for the "reducement" thereof in 1652, it may rather be supposed, that he continued to be a *resident* of Virginia until that period and some time after. It is possible, however, that he might have assisted in conducting the Puritans from Virginia to Providence, (now Annapolis,) on their first coming there in the present year, 1649.

taken place in the year 1649,* but at what time of the year we are no where informed. Most probably they did not leave Virginia in a body, but gradually in small numbers in the course of the spring and summer of this year, 1649. It is expressly stated by the same last mentioned authority, that they were not invited into Maryland by governor *Stone*; but by a friend of the governor's,† that they were only "received and protected." These people seated themselves at a place by them called *Providence*, but afterwards *Anne Arundel*, most probably on or near the spot on which the city of *Annapolis* now stands. It is alleged by their advocate, (*Leonard Strong*, before cited,) that "an oath to the lord Baltimore was urged upon this people soon after their coming up,‡ which if they did not take, they must have no land nor abiding in the province." The "oath" here alluded to was the *oath of fidelity*, herein before stated, as prescribed by his lordship, and annexed to his "conditions of plantation" of 1648. The condition was—that "every adventurer or planter, that should have any land "granted to him by virtue of these conditions, before any grant should be delivered to him, should take the oath of fidelity to his lordship thereunto specified."§ This oath, besides the objection to it before stated, as to the words "royal jurisdiction," and "absolute dominion," "was exceedingly scrupled," (according to Mr. *Strong*,) "on another account, viz. that they must swear to uphold that government and those officers, who were sworn to countenance and uphold anti-Christ, in plain words expressed in the officer's oath—the Roman Catholic religion." But to this it was very forcibly replied by the author of the "Refutation," &c., that "there was nothing promised by my lord or captain *Stone* to them, but what was performed. *They were first acquainted by captain Stone before they came there, with that oath of fidelity, which was to be taken by those who would have any land there from his lordship; nor had they any regret to the oath, till they were as much refreshed with their entertainment there, as the snake in the fable was with the countryman's breast; for which some of them are equally thankful. But it is now, it seems, thought, by some of these people, too much below them to take an oath to the lord proprietary of that province, though many Protestants, of much better quality, have taken it,*

* Mr. *Leonard Strong*, in his "Babylon's fall," &c.

† Mr. *John Langford*, in his "Refutation," &c.

‡ This means coming up the bay of Chesapeake from Virginia.

§ See the note (LXIX.) before cited at the end of this volume.

CHAP. V. and, (which is more than can be hoped for from some of these
 1649. men,) kept it. As to the government there, *they knew it very well before they came thither*; and, if they had not liked it, they might have forborne coming or staying there; for they were never forced to either. The chief officers, under my lord, there, are *Protestants*. The jurisdiction exercised there by them is no other than what is warranted by his lordship's patent of that province, which gives him the power and privileges of a count palatine there, depending on the supreme authority of *England*, with power to make laws with the people's consent; without which powers and privileges his lordship would not have undertaken that plantation, and have been at so great a charge, and run so many hazards as he hath done for it." "There are none there sworn to uphold anti-Christ, as Mr. Strong falsely suggests; nor doth the oath of fidelity bind any man to maintain any other jurisdiction or dominion of my lord's, than what is granted by his patent. Though some of these people (it seems) thinke it unfit that my lord should have such a jurisdiction and dominion *there*, yet they, it seems, by their arrogant and insolent proceedings, thinke it fit for them to exercise farre more absolute jurisdiction and dominion there than my lord Baltimore ever did; nor are they contented with freedome for themselves of conscience, person and estate, (all of which are establisht to them by law there and enjoyed by them in as ample manner as ever any people did in any place in the world,) *unless they may have the liberty to debarr others from the like freedome*, and that they may domineere and doe what they please."

Although these people had thus, with the permission of the lord proprietary's government, seated themselves within the province of Maryland, in the year 1649, yet it does not appear, that they immediately thereon subjected themselves to the proprietary government at St. Mary's; inasmuch as no organization of any civil government under the authority of the lord proprietary appears to have taken place over them until the next year. The place or spot on the Severn—the peninsula or neck of land, whereon Annapolis now stands, where they are supposed to have first settled, was probably uninhabited by any Europeans before their arrival; and, thus secluded from the rest of the inhabitants of the province, it is probable, that, according to the usage of the congregational church of New England, a branch of which church they were, a sort of hierarchical government

was established by them, similar to that which had been practised by the first colonies of Plymouth, Massachusetts, and Connecticut. This sort of government, in the experience of those colonies just mentioned, was amply sufficient to supply the want of *civil* government, where the colony consisted of not much more than a hundred persons, as that of Providence in Maryland. No tyrant could be more arbitrary and despotic than a ruling elder of a congregational church. "No matters of weight or moment, whether of a *religious* or *civil* nature, were determined without their advice, and a formal reference to them. Matters offensive to the church, regularly, were first brought to the ruling elder in private, but might not otherwise be told to the church; and in church discipline, and indeed in some measure in their church service, he appears to have sat with the minister or teacher, and to have been co-ordinate with him in ecclesiastical power. They were considered, without doors, as men for advice and counsel in religious matters; they visited the sick, and *had a general inspection and oversight of the conduct of their brethren.*"* The energy of such a hierarchy may be evidently inferred. It not only took cognizance of the minutest deviation from moral deportment, but pervaded even the recesses of thought and mind. Obstinacy, idleness, and "light-carriage," were among the *civil* offences punishable under their abominable jurisprudence; which they professed to copy from the Mosaic code. As Mr. *Durand* was the elder of this church in Virginia, and came into Maryland with them, we may suppose him to have still continued in that capacity; and, being under such a government of their own, there could be no wonder that they never heartily assented to submit to the dominion of lord Baltimore, whom they considered as anti-Christ.

Neither does it appear, that any grants of lands or territory were made to these people, either collectively or individually, either prior to or subsequent to their arrival in Maryland, until the latter end of July, 1650, when also their settlement was organized as a county under a commander and commissioners of the peace, as the isle of Kent had been before. This circumstance, however, might possibly be attributed to several causes, which must have operated over the whole province for some years before this period. The loss of the great seal of the province, taken away by Ingle or Clayborne in 1644, had prevented

* Hutchinson's Hist. of Massachusetts, vol. 1, p. 374.

CHAP. V. any grants of lands from being made, at least for a considerable period of time, if not until the lord Baltimore had sent in a new seal, in the year 1648, as before mentioned. In the mean time, his lordship's power and authority over his province had been so shaken by Ingle's and Clayborne's rebellion, as it is called, as also by the great revolution of affairs in the mother country, that few "adventurers," it seems, would put themselves to the trouble or expense of taking up lands within the province, or at least of applying for *grants* thereof; especially as a strong conjecture was then afloat, that his lordship would infallibly be soon deprived of his province. These inferences may be obviously drawn, not only from the concomitant circumstances of the times, but from a proclamation issued by governor Stone, on the twelfth of April of this year, (1649,) wherein, after stating the loss of the great seal and his receipt of a new one, he requires all persons then resident within the province, or within the colony of Virginia, or elsewhere, who pretended any right to any lands due unto them within the province, by virtue of any conditions of plantation, or any other warrant, under his lordship's hand and seal at any time before the 17th of March then last past, should, on or before the times therein specified, come and make their right appear and demand grants; under the penalty of being refused their grants thereafter; his lordship having by such offers performed his *conditions* on his part. At the expiration of the time therein limited and specified, another proclamation was issued by the governor, bearing date the 30th of October of this year, 1649, giving further day to the persons described in the former proclamation, to wit, until the 25th of March then next following, for the purpose of obtaining grants, as before mentioned; assigning as a reason therefor, that divers of the inhabitants, who came within the preceding description, could not attend the surveys of their lands by the time limited, without great damage to be by them incurred by leaving their crops. Again also, on the 25th of March, 1650, another proclamation was issued, reciting the two former, giving further day, for the same purpose, to the same persons, until *Michaelmas* day next ensuing, (which was on the 29th day of September then next following,) assigning as a reason therefor, that the persons before described pretended, that they had no notice of the former proclamations. This proclamation now issued, on the said 25th of March, 1650, was however declared therein to be per-

empty notice, final and binding.* These proclamations strongly indicate the general opinion, which appears to have been now prevalent within the province, and perhaps elsewhere, of the precarious continuance of the lord proprietary's government over the province, and consequently of his right to make grants of lands therein. Planters and "adventurers," who had obtained warrants for tracts of land, probably flattered themselves, that by a little patience and neglect in taking out grants, they would speedily be relieved from any rents to be claimed by his lordship.

In connexion with this subject, the grants of lands, it will be proper to mention here, that his lordship had thought it proper to issue this year new conditions of plantation, bearing date the second day of July, 1649, with a commission of the same date annexed thereto; which conditions and commission must have arrived within the province towards the latter end of the summer of this year. The reasons, inducing his lordship to this measure, are not very apparent. The only one assigned in the commission is, that he was informed that the conditions of 1648, before stated, "were not like to give sufficient encouragement to many to adventure and plant there." The principal alterations seem to be in the increase of the size of the manors to be granted, to wit, three thousand acres for every thirty persons transported into the province, instead of two thousand for every twenty, and for a lesser number of persons one hundred acres for every individual instead of fifty, as by the former conditions of 1648. The obnoxious clause in the former, requiring every grantee, before he could have the benefit of a grant, to take the *oath of fidelity*, "hereunder specified," as expressed in the conditions, was still renewed or continued in these last conditions of 1649; but whether the oath now required was the same as that annexed to the former conditions, does not appear.†

In further illustration of the mode of colonizing the province at this period of time, some mention also may be made of a commission to Robert Brooke, esqr., bearing date September 20th, 1649; which commission, from the tenor of it, appears to have emanated immediately from his lordship in England,‡ and not

* See these several proclamations at large in *Kilty's Landholder's Assistant*, p. 44, 51, 52.

† The conditions, and commission thereto annexed, of 1649, are recorded in "Council Proceedings from 1636 to 1657," p. 220, and are published at large in *Kilty's Landholder's Assistant*, p. 45; but I did not perceive in the record any copy of an *oath of fidelity* "thereunder specified."

‡ The conditions of plantation, and commission thereto annexed, of July 2d, 1649, just before referred to, are both dated, as "given at *London*." From which

CHAP. V. issued, as usual, by his lieutenant general in the province. The
 1649. preamble of it recites, that—"Whereas our trusty and well be-
 loved Robert Brooke, esqr. doth, this next summer's expedition,*
 intend to transport himself, his wife, eight sons, and family, and
 a great number of other persons, into our said province, &c.,
 there to erect, make, and settle a considerable plantation," &c.
 The commission then proceeds,—“We appoint him the said
 Robert Brooke to be *commander* under us, &c., and our lieuten-
 ant, &c. of one whole *county* within our said province to be
 newly set forth, erected, &c., round about and next adjoining to
 the place he shall so settle and plant in. Provided, that the said
 county and place of settlement, &c. do not extend into or in-
 trench upon any county or counties already nominated, &c.;
 and that the said county be allotted, set out, and apportioned, by
 such a quantity and number of miles, and such extent and cir-
 cumference of ground, as other counties in our said province, or
 as counties in Virginia, are usually allotted and extended.”†
 The commission then “grants unto him all such honors, digni-
 ties, privileges, fees, perquisites, profits and immunities, as are
 belonging to the said place and office of *commander* of the said
 county, and as are used and enjoyed by other *commanders* of the
 county of the isle of Kent, or any other county in the said pro-
 vince.” In the same manner as in the commission before men-
 tioned to Mr. Robert Vaughan, which constituted him *commander*
 of the isle of Kent, Mr. Brooke is authorised by his commis-
 sion also, to choose six or more of the inhabitants of his said
 county, “with whom he shall advise and consult in all matters
 of importance,” to be appointed by the governor, conservators
 of the peace, &c., and with him to hear and determine all mat-
 ters criminal, which may be heard and determined by justices of
 peace in England, and all *civil* causes (with the advice of the
 commissioners) not exceeding £10 sterling.‡ There appears to

we may infer, that his lordship, though a Roman Catholic, now stood so well with the *ruling powers* of England, after the death of the king, that he could with safety venture to reside in *London*.

* This must have meant, in the course of the summer of 1650.

† This seems to corroborate the suggestion, herein before made, that the *laying out of counties* within the province, was deemed rather within the *executive* powers of his lordship's “royal jurisdiction,” as count palatine of the province, than a subject of *legislative* interposition. Hence few of the counties within the province appear to have been erected by acts of assembly. This will more clearly appear, when we come to remark on the act of 1650, for the erection of *Annapolis* county.

‡ “Council Proceedings from 1636 to 1657,” p. 232.

have been a separate commission to him also, of the same date, CHAP. V.
1649. to be one of the council in the province. As his name frequently occurs in subsequent documents, he must have emigrated to the province according to his agreement, and probably with his "eight sons" and family:—a handsome contribution from his own loins towards increasing the population of a new colony; and, from a subsequent document, (herein after to be stated,) it appears, that an order was made on the 21st of November, 1650, for erecting some part of the south side of Patuxent river into a county, by the name of Charles county, of which Mr. Brooke was made commander. He was probably a *Puritan*, of some note, if we may judge from the favour he found with them in the "reducement" of the province in the year 1652. It would seem from this, to have been lord Baltimore's policy at this time to get influential men of that party to settle in his province, under a hope that they would support his rights therein.

About this time governor Stone, having "occasion to be absent out of the province," most probably on a visit to his friends and estate in Northampton county, in Virginia, appointed, in virtue of his commission in such case, "Thomas Greene, esqr. to be lieutenant general in his absence, and in case of his refusal Mr. Thomas Hatton his lordship's secretary."* Mr. Greene, after he had been displaced from the office of governor, as has been before stated, was the first named councillor in the commission of the council. From the cautious expression above, "in case of his refusal," it might be inferred, that some doubts existed, whether he would serve as governor or not, after being dismissed without sufficient cause, as he might naturally suppose. It appears, however, that he consented to act, and his name, as lieutenant general of the province, is affixed to one or two public documents within a month or two afterwards; one of which, on account of its then interesting importance to every inhabitant of the province, requires to be mentioned.

Immediately or within a day or two after the late king Charles the first had been beheaded, (January 30th last,) the house of commons passed an act or ordinance,—Charles the
second
proclaimed
king.—"That no person whatsoever should presume to declare Charles Stuart, son of the late Charles, commonly called the prince of Wales, or any other person, to be king, or chief magistrate of England, or Ireland, or

* This appointment appears, as an entry on the proceedings of the council, and not by commission; and bears date September 20th, 1649, signed William Stone.—"Council Proceedings from 1636 to 1657," p. 242.

CHAP. V. *of any dominions belonging thereunto*, by colour of inheritance,
 1649. succession, election, or any other claim whatsoever; and that whoever, contrary to this act, presume to proclaim, &c., should be deemed and adjudged a traitor, and suffer accordingly.”* The parliament of Scotland, however, proceeded somewhat differently, and within about a week after the death of the late king, (February 5th,) published a proclamation, wherein they proclaimed and declared, “that Charles, prince of Scotland and Wales, was, by the providence of God, and by the lawful right of undoubted succession, king of Great Britain, France, and Ireland;” but to this they added the following declaration by way of proviso :—“that before he be admitted to the exercise of his royal power, he shall give satisfaction to the kingdom, in those things that concern the security of religion, the unity betwixt the kingdoms, and the good and peace of this kingdom, according to the national covenant, and the solemn league and covenant.”† The commissioners of the kirk also made their declaration, “that he should, first sign the covenant, submit to the kirk’s censure, renounce the sins of his father’s house, and the iniquity of his mother.”‡ About the same time also, the prince of Wales, being then at the Hague and receiving the news of his father’s death, assumed the title of king. In Ireland, the marquis of Ormond, appointed by the late king lord lieutenant of that kingdom, and still continuing to act so, as soon as he received information of the late king’s death, immediately caused the prince of Wales to be proclaimed king, in all places subject to his authority; but, although the portion of Ireland over which he had authority seems to have been at this time but very confined, comprehending only the southern and eastern parts of Leinster, yet, in the acknowledgment of the royal succession in the prince of Wales, he seems to have been joined by all the moderate Roman Catholics of Munster and the southern parts of Ireland, who had been, ever since the year 1642, almost exclusively governed by

* Clarendon’s Hist. (fol. edit.) p. 570 ;—who calls it a *proclamation*; but in Rapin’s Hist. it is called an *act*. There was probably first an act passed by the house, as above, and then a proclamation published reciting that act. All executive as well as legislative business was now vested in the house of commons; at least, until they appointed the council of state.

† This “solemn league and covenant” expressly required the abolition of Episcopacy, the preservation of the church of Scotland, and the bringing the churches of all the three kingdoms to a *uniformity*; in other words, to establish *Presbyterianism*.

‡ The “iniquity of his mother,” we must suppose to have been *Popery*.

“the supreme council of the confederate Catholics of Ireland,” CHAP. V.
1649.
 who sat at Kilkenny, and with which council the marquis had then lately (in December, 1648,) concluded a treaty, very much to the satisfaction of the Catholics, as it well might be, for they were thereby left, not only to the free and secure exercise of their religion, but in some measure also under their own *civil* government. In the north, however, in Ulster, Owen O’Neale, who was said to have been a descendant of one of the old aboriginal Irish kings, kept a considerable portion of the more virulent Catholics under his banners; and, being encouraged therein, by the Pope’s nuncio—Rinuncini, who had, by his arrogant, positive and dictatorial manner, so offended the members of the supreme council, that they excluded him from any communication with them, this Irish chieftain of the north refused to acknowledge the prince of Wales as lawful successor; and, what exhibited a considerable want of principle in him, chose rather to join with colonel Michael Jones, who commanded in Dublin, under the English parliamentarians. He had, however, privately sent word to the king, that if he could be included in the act of oblivion, allowed liberty of conscience, employed in his majesty’s army, and *advanced to the dignity of an earl*, he would submit to acknowledge him as king. As the accommodation, which Jones had made with O’Neale, was not approved of by the English Puritans, O’Neale soon became disgusted with his new friends, and subsequently, before the expiration of this year, joined the rest of the Catholics of Ireland in the acknowledgment of the royal succession.*

Whether this conduct of the majority of the Irish Catholics had any influence on those of Maryland, we are not able positively to determine; but, it is probable, that, together with the loyalty of Virginia,† it might have had some influence in inducing Mr. *Greene*, who was now governor of Maryland, in the absence of governor Stone, and who appears to have been himself a Roman Catholic,‡ to cause the prince of Wales to be

* Leland’s Hist. of Ireland, vol. iii. pp. 290, 355.

† Although Virginia remained loyal to Charles the second after the death of his father, through the means of Sir William Berkeley’s influence, until it was “reduced” by the Puritans in 1652, yet I do not find it mentioned any where, that Charles the second was *proclaimed* there. It is most probable, however, that he was, inasmuch as he was acknowledged there to be king.

‡ Mr. *Greene*’s name is not in the list of *Protestants*, who subscribed the “declaration and certificate” of the 17th of April, 1650, hereafter stated; as it would most probably have been, had he been a *Protestant*,—he being then resident in the province, and one of the council.

CHAP. V. proclaimed in Maryland, "the undoubted rightful heir to all his
 1649. father's dominions;"—which was done on the 15th of November of this year, 1649; and which was accompanied, as usual on such occasions, with another proclamation of the same date, "to further the common rejoicing of the inhabitants upon that occasion," as it is therein expressed, declaring a *general pardon* to all the inhabitants of the province for every offence before committed.* We shall see hereafter this bold proceeding of our governor, in the face of the parliamentary act of *treason* just stated, assigned as one of the strongest reasons, why Maryland required "reducement" more than any other colony, and why lord Baltimore, a Catholic, should be deprived of his government of the province. We may suppose, however, that our new colony of Puritans, just settled on the Severn, did not cause its shores to re-echo with their "rejoicings" on this occasion.

Governor
 Stone re-
 turns and
 convenes
 the assem-
 bly.

Our documents furnish us with no further occurrences of the year 1649, ending, according to new style, on the last day of December. But in January of the succeeding year, 1650, according to modern computation, governor Stone having returned to the province and resumed the functions of his office, thought it proper to convene the legislature of the Province. He, for that purpose, issued his proclamation, directed to the sheriff of St. Mary's county; which, as it unfolds in itself some of the constitutional principles, upon which a new modification of the provincial legislature was now about to take place at this session, may be properly inserted here at large.

"By the Lieutenant General, &c. of Maryland.

"PROCLAMATION.—Whereas the manner of summoning assemblies within this province is wholly left to the lord proprietary's discretion, these are therefore in his lordship's name, and according to his directions, to will and require you without delay to give notice to all the freemen of St. Mary's county, that they are to appear personally at Saint Mary's, the 2d day of April next, or else by proxies and delegates, so as no one freeman so appearing have above two proxies besides his own voice;† or, that forthwith after such notice the freemen of every hundred within the said county make choice of burgesses within

* See these proclamations at large in note (LXXIV.) at the end of this volume.

† The multiplicity of *proxies*, which some members brought at some of the preceding sessions of assembly, was repugnant to the practice of the house of lords in England, from which the privilege was copied; as has been before observed.

every such hundred, in manner following, viz.—that all the free-
men of St. Clement's hundred, or the major part of them, make
choice of one of the freemen of the said hundred for their bur-
gess; that all the freemen of New-town hundred, or the major
part of them, choose two or three of the freemen of that hundred
for their burgesses; that all the freemen of St. George's hun-
dred, or the major part of them, choose one or two of the free-
men of that hundred for their burgess or burgesses; that all the
freemen of Saint Mary's hundred, or the major part of them,
choose one of the freemen of that hundred for their burgess;*
that all the freemen of St. Inigoe's hundred, or the major part
of them, choose one or two of the freemen of that hundred for
their burgess or burgesses; and that all the freemen of St.
Michael's hundred, or the major part of them, make choice of
one or two of the freemen of that hundred for their burgess or
burgesses; who are to assemble themselves at the time and place
aforesaid, to adjudge and consult with the rest of the assembly
then and there to meet, about the weighty affairs and for the
public good of this province; Provided, that the freemen of
every of the said hundreds, or the major part of them, respec-
tively do agree together in one of the two ways of assembling
themselves last mentioned; or otherwise they are all of them
hereby required to appear personally, and not their proxies or
delegates or burgesses, at the time and place, and for the pur-
pose, before expressed; and for the Pur——,† to give them
particular notice; and herein you are not to fail at your peril, as
also to make return hereof at the time and place aforesaid.

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* The freemen of St. Mary's hundred were rather discontented with this allotment of only one burgess; as appears from the following memorandum inserted in the record immediately after the above proclamation.—“The freemen of St. Mary's hundred earnestly request the governor to give them power of choosing *two* burgesses; alleging that hundred to be the ancientest hundred and the first seated within this province under his lordship's government; who granted their request and desire accordingly.”

† This abbreviation of a word is so in the record. But from all the circumstances before stated, and from that of two burgesses appearing in this assembly from *Providence*, the name of the new settlement on the Severn, it seems evident, that the word, thus partly inserted in the record, was intended for the word *Puritans*. It is true, that the act of assembly of the last session, entitled, “an act concerning religion,” forbade the “reproaching” any person, among other terms, with that of *Puritan*, under a severe penalty; but, it is possible, that as they could not be designated by any other term known at that day, and on this occasion not done “reproachfully,” the term was adopted in the abbreviated form as above. Thus *Quakers* are now commonly so called, without any *reproachful* meaning, although certainly the term in its origin was so considered,

CHAP. V. Given at St. Mary's, this 24th day of January, *anno domini*,
 1650. 1649.

To the sheriff of St. Mary's } WILLIAM STONE."
county, his deputy or deputies. }

A duplicate of this proclamation is stated to have been sent to the sheriff of the isle of Kent county, with the slight alteration therein, that the freemen there were "to make choice of one, two or three burgesses," &c. The freemen, throughout the province, it seems, embraced the alternative prescribed in the proclamation, of choosing burgesses; instead of appearing personally, or by proxies. In St. Mary's county burgesses were chosen from the respective hundreds therein. From the isle of Kent one burgess only, but from Providence, two were sent.

On the appointed day for the meeting of the assembly, (the second of April,) the sheriff of St. Mary's county made his return, that "all and every of the freemen of St. Mary's county had been summoned according to the directions of the summons, and had made choice of the burgesses following for every hundred, viz," &c.* As no return had been made, on this first day of the session, nor any appearance of the freemen or burgesses, either from the isle of Kent or Providence, "the governor adjourned the house till Friday next being the fifth day of the same present month."

On the day of adjournment, (the fifth,) the burgesses from the isle of Kent and from Providence appeared. Mr. Robert Vaughan, the only burgess from the former place, made his own return, as follows: "This summons," (meaning probably the writing upon which the return was thus endorsed,) "was duly executed, and by virtue thereof I was by the major part of the freemen chosen burgess for the isle of Kent county, which I do certify in return thereof. Robert Vaughan." It will be recollected, that Mr. Vaughan was at this time also one of the council, as well as commander of the isle of Kent; so that some difficulty arises at this day, in reconciling his election as a burgess to the division of the assembly into two houses or branches. It will, however, be seen, when we come to the "act for settling this present assembly," that Mr. Vaughan was not considered as a member of the lower house but of the upper, that is, as one of

*The names of the burgesses of St. Mary's county are the same as those in the "act for settling this present assembly," hereafter stated, except that in the sheriff's schedule those names are respectively affixed to the several respective hundreds for which they were burgesses.

the council. The return from Providence was somewhat more singular, and was made by the governor himself; who, as it would seem, had gone up the bay, shortly before the meeting of the assembly, to visit the new colony at Providence; probably with a view of reconciling in an amicable way these refractory Puritans to the proprietary government. They consented to send burgesses to the assembly, and the governor's return thereof was as follows:—"By the lieutenant, &c. of Maryland. The freemen of that part of this province of Maryland, now called Providence, being by my appointment duly summoned to this present assembly, did unanimously make choice of Mr. Puddington and Mr. James Cox for their burgesses, I being there in person at that time."

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On the next day, (April 6th,) the house, after choosing Mr. James Cox, speaker, and Mr. William Britton their clerk, proceeded to business. We may remark here, that this choice of a speaker seems to indicate strongly, how the politics, or rather the religion, of the house stood. Mr. James Cox, one of the members from Providence, was without doubt a zealous Puritan, or he would not probably have been chosen as a burgess by the inhabitants of that settlement. Neither can we suppose that he would have been now elected speaker of the house, unless a majority of the members had professed, or at least been inclined to, the same religious opinions, as he did. The house consisted of fourteen members, eight of whom subscribed their names, as *Protestants*, to the "declaration and certificate" of the 17th of this month, as will presently be seen. It seems to follow, therefore, that all of these *Protestants*, who made a majority in the house, approved of the religious sentiments of this zealous Puritan, whom they had thus elected as speaker.

Their proceedings.

The first business, which the house took up, was the adoption of an *oath* to be taken by every burgess; which proceeding seems to have emanated from the burgesses themselves, and not on the part of the governor and council, it being thus expressed: "Upon the motion and desire of the burgesses this day assembled, the governor appointed Mr. Secretary to draw two several oaths, one for the burgesses, and the other for the clerk; which was done." This seems to indicate the mode, in which the business of the legislature of the province was transacted in these early times. Some proof has been before offered herein of the extreme deficiency in literature among the first planters or

CHAP. V. settlers in Maryland;* as was the case indeed in those times,
 1650. not only among those of New England and Virginia also, but even among the common people of Old England. It was probable, therefore, that very few of the fourteen members of the lower house, at this session, were capable of draughting a bill. The former secretary of the province, Mr. Lewger, appears to have been a lawyer by profession, and it is probable that the present secretary, Mr. Hatton, being sent from England by his lordship expressly for the office, was also of that profession, probably some English attorney. He was, therefore, the most proper person to prepare the form of oath required; and indeed it might possibly have been deemed at that time the appropriate duty of the secretary to prepare all legislative acts. These oaths, it seems, were very speedily prepared, and, on this same day, "were administered by Mr. Secretary to the clerk and burgesses then present; no one contradicting."†—Why *secrecy*, in relation to the debates and proceedings of this session, was enjoined by these oaths, no adequate cause is to be traced from the journal or records. The Catholic party in the house appear to have been discontented with it.

It appears from the journal, that on the first day of this session, (April 2d,) the house had made an order, for drawing "an act for settling this present assembly," as also for rules and orders to be observed. The act had been prepared and was now on this day (April 6th,) read, and from the urgency of the measure seems to have been passed immediately on its first reading. It is stated on the journal to have been "unanimously agreed

* Out of fifteen members of the assembly of 1639, seven of them made their marks, not being able to write their names.—See before, p. 99.

† An objection to the oath, which occurred in a subsequent part of the session, may perhaps render that of the burgesses worthy of perusal. It is therefore here inserted.—"I, A. B. do swear that I will faithfully and truly, according to my heart and conscience, to the best of my understanding and ability, without favour, affection, or self ends, advise, consult, and give my vote to all bills and other matters, wherein my advice or vote shall be required, during this assembly, wherein my chief end and aim shall be *the glory of God* in my endeavours for the advancement and promotion of the lord proprietary's just rights and privileges, and the public good of this province; and will also *keep secret* during this assembly all such matters and things as shall be acted and debated or consulted of in both or either houses of this present assembly, wherein *secrecy* shall be required or be requisite, so far as I may, and will not wittingly or willingly publish, divulge, or speak of the same to any person or persons whatsoever being no member of one of the said houses of assembly—So help me God."

The oath of the clerk contained the same clause of *secrecy*, in addition to the faithful performance of his office.

unto ; and signed and confirmed by the governor." As this act constituted a *form of government* for the province, which existed from the time of its passage to the dissolution of the provincial government at the American revolution, it becomes a document of material import in the history of the province. It therefore claims a place in the body of this work.

"An act for settling of this present assembly.

"Be it enacted by the lord proprietary, with the advice and consent of the council and burgesses of this province now assembled, That the present assembly, during the continuance thereof, be held by way of upper and lower house, to sit in two distinct houses, apart, for the more convenient dispatch of the business therein to be consulted of: And that the governor and secretary, or any one or more of the council for the upper house; and Mr. John Hatch, Mr. Walter Beane, Mr. John Medley, Mr. William Broughe, Mr. Robert Robins, Mr. Francis Poesie, Mr. Philip Land,* Mr. Francis Brooke, Mr. Thomas Matthews, Mr. Thomas Sterman, Mr. George Manners, burgesses for St. Mary's county, Mr. George Puddington, and Mr. James Cox, burgesses of that part of the county now called Providence, or any five or more of them, for the lower house, together with the clerk of that house for the time being, who shall from time to time assemble themselves, at the time and place to be by the governor (or whomsoever of the council he shall, by writing under his hand, depute for that purpose) from time to time appointed, during this present assembly, shall have the full power of, and be, two houses of assembly, to all intents and purposes. And all bills which shall be passed by the said two houses, or the major part of both of them, and enacted or ordained by the governor, shall be laws of the province, after publication thereof under the hand of the governor, and the great seal of the province, as fully, to all effects in law, as if they were advised and assented unto by all the freemen of the province personally."†

Although the expression in the preceding act,—“during the continuance thereof,”—seems to intimate, that the arrangement of the “two houses” was to continue only “during the continuance” of this “present assembly,” yet it is certain, that this di-

*In the list of the members, as it is on the journal of the house, the name is *Philip Lane*.

†Copied from Mr. Bacon's Collection of the laws of Maryland.

CHAP. V. vision of the legislature into two houses, the governor and council forming what was called the upper house, continued until the
1650. American revolution, with the exception, perhaps, of the few years, when the government acted under his highness the lord protector; nor does our statute book afford any other authority for that division of the legislature, which was always so observed under the proprietary government.

At the meeting of the lower house, on Monday, 8th of April, a case occurred, relative to the oath just before prescribed to the burgesses. Mr. Thomas Matthews, burgess from St. Inigoe's hundred, had neglected or refused to take that oath, and on being required to take it, (perhaps, by the speaker,) he replied, "that he thought that oath could not be taken by him; for, that according to his lordship's instructions sent hither, that *all people believing in Jesus Christ should have the free exercise of their religion*; and accordingly he ought to be guided in matters of conscience by his *spiritual* council; and, if so be he understood not and could not be satisfied in his judgment in any matter which may be spoken or debated, he could not advise with whom he ought therein, if he took such oath; and so consequently had not the free exercise of his religion."

We must suppose from the tenor of this reasoning, that Mr. Matthews was a zealous Roman Catholic. Although indeed it is impossible for any sect of christians to have been more completely under the dominion of their priests and elders, than the Congregationalists or Puritans of New England were at this period of time, which must have been the case also with the colonists of Providence in Maryland; yet, as the Roman Catholic party of the province were evidently at this session of assembly in the minority, and did not heartily approve of the proposed oath of secrecy, which must have emanated from the Puritans, we must infer from Mr. Matthews's objection, that the "spiritual council," to which he alludes, was some father confessor, or other ecclesiastic character, of the Romish church, with whom he had been in the habit of consulting and advising in all difficult cases, whether spiritual or temporal, as many good Catholics, as well as other members of other sects, are in the practice of doing even at this day. The principle, however, which pervades his reasoning, as above, would be rather inadmissible under our modern governments of America. When our American congress occasionally sit with closed doors, (notwithstanding

the republican principle, that republics ought to have no secrets,) CHAP. V.
 should a member rise and say, that he could not consent to keep 1650.
 any of the proceedings of congress secret from his pastor or preacher, whose advice he was in the habit of asking in every case, would it not excite a smile, and perhaps a retort courteous from some "ungodly Virginian." This remark is here made merely to illustrate the impropriety of Mr. Matthews's objection to the oath, however unnecessary such oath might have been; and such appears to have been the opinion of a majority of this assembly; for "the house thereupon gave censure, that the said Mr. Thomas Matthews should depart the house, and not have any vote therein; who departed and absented himself accordingly."

As a part of the proceedings of the assembly on this day, (8th of April,) we find on the journal the following minute.—
 "Was read the sixteen laws sent in by his lordship to be assented to and enacted without alteration." But it no where appears on the journal, that they were either adopted or rejected *in toto*; yet, as some of the subjects of these laws were acted upon at this session, and legislative acts passed relative thereto, particularly the act of recognition, and the act against raising money within the province without consent of the assembly, also those concerning levying of war and concerning trade with the Indians, we may therefore suppose, that the assembly of this session did, as they themselves said, at the last session they either had done or would do, *selected* such of these sixteen laws sent in by his lordship, and enacted them, with perhaps such alterations as were agreeable to them.

The expulsion of Mr. Matthews from the lower house, as just stated, occasioned some animadversions upon it by one of the members of the upper house, particularly by Mr. Thomas Greene, the former governor, and now first named in the council. Mr. Greene, being a Roman Catholic, as appears, naturally espoused the cause of Mr. Matthews, and was thereby induced to utter some harsh speeches against the Puritans or Protestants for their injustice on this occasion. Those who formed a majority of the lower house, whom we may suppose to have been Protestants, if not Puritans, proposed to deliver, what they called, a *petition* to the upper house, complaining of Mr. Greene's conduct; as appears from the following entry:—"The burgesses delivered a petition to the upper house for certain harsh speeches

CHAP. V. uttered by Mr. Thomas Greene against them, with injustice for
 1650. expelling Mr. Thomas Matthews out of the house, refusing to take the oath of secrecy; and for *their* taking the said oath in that manner.”

During the debate on the above proposition of a petition, it naturally occurred to the lower house, that it would be useless for them to take an oath of secrecy, unless the like injunction was observed by the upper house. They, therefore, made the following order:—

“Upon debate of which,” (that is, of the petition,) “it being conceived impertinent* for the burgesses to take the oath of secrecy in the lower house, unless the same were likewise taken by the council in the upper house,——† which said order was brought into the lower house; viz.—Whether such members in the upper house, refusing to take the oath of secrecy as the burgesses, shall have liberty or vote in the said house; and the house assented, that they should not have vote or seat in the said house during the assembly, unless they assent and take such oath.”

The obscurity of expression, in which this order is drawn, occasions some difficulty or uncertainty in the interpretation of it. The impropriety in the lower house’s attempting to expel a member of the upper house from having a seat or vote in such upper house, seems to preclude the supposition, that such was the meaning of the order. But, as the words—“said house” must refer to the house last mentioned, to wit, the upper house, and the members of the upper house sitting by themselves, having neither vote nor seat in the lower house, if the order meant to expel any member of the upper house from a seat or vote in the lower, unless he took the oath of secrecy, the order was useless and inoperative, such member not pretending to either vote or seat in the lower house. It therefore appears to have been meant as a proposition for the other house to adopt, and perhaps so presented to them, as a part of their petition.

This petition was presented to the governor by the speaker on the same day, on which it was agreed to, to wit, on “Wednesday afternoon, April 10th;”—“and the governor told the

* The word “impertinent” here means useless, unnecessary, or inapplicable to the purpose.

† There is an omission of something here in the record, which renders the sense imperfect; but it evidently means, that the house thereupon came to the following order, as stated above.

speaker, that he should have an answer of the petition the next day." But, a whole week elapsing, and no answer being returned thereto, the lower house, on the 18th of April, sent some of their members to the governor concerning it. They returned "with this answer from the governor and upper house; that the lower house had not power of *themselves* to expel any member out of their house, *the governor not being present*; but conceived that Mr. Matthews expelled himself, for that he came not to demand his voice *after the governor himself was present in the house.*" From this it would appear, that the governor and upper house were of opinion, that *his presence* was necessary in the lower house to render valid such an act of the legislature as the expulsion of one of their members. But this opinion seems to have been repugnant to the supposition, that the governor and council sat in an apartment by themselves, as before stated, and was moreover equally so to the principles of the English constitution; for, the king could not constitutionally take his seat in the house of commons.

After Mr. Matthews had been expelled from the lower house, as before stated, it became necessary that a new burgess should be elected for St. Inigoe's, or the hundred would have been unrepresented in the legislature. Accordingly on "Thursday, 11th of April," (three days after the expulsion,) "summons issued for the choice of a new burgess in the stead of Mr. Matthews." Nearly a week elapsed, it seems, before this summons was returned; when on "Thursday, 18th of April, the sheriff returned the summons and Mr. Fenwick, burgess of St. Inigoe's hundred in Mr. Matthews's room.

"Mr. Fenwick making his appearance in the house, Mr. Speaker proposed the oath of secrecy to him; and Mr. Fenwick declared, that he would take that oath, *provided* that it might not prejudice in any sort his religion or conscience. And the house voted, that the said Mr. Fenwick ought not to have place, or be a member, in the house, unless he took the oath directly as it lyeth without any reservation at all either of religion or conscience; except Mr. Manners, Mr. Medley, and Mr. Lane, who declared and desired, that the said Mr. Fenwick might have time to consider of the said oath; which was admitted and granted by the whole house till to-morrow morning."

However in the afternoon sitting of the same day,—“The whole house declared, that it never was intended by the house,

CHAP. V. that in the oath of secrecy any thing is meant to infringe liberty
 1650. of conscience and religion : whereupon Mr. Fenwick was sworn
 as the other burgesses.”

Why such a strenuous opposition to this oath of secrecy should have been thus made by a party of the colonists, is not very apparent at this day ; especially as in itself it seems to have been a matter of no great consequence. If, however, we suppose, that this party, who thus opposed the measure, were Roman Catholics, we ought to infer, that they had some good reasons for so doing, which are now unknown. It is certain, that the *Protestants* then ruled and governed the province ; and, although these Protestants might, for the most part, have professed themselves to be of the old church of England, which was still the established religion in Virginia, yet, as religious consciences are very apt to veer and change with the times, and *puritanism* had become, in the mother country, the order of the day, many of our provincial politicians might think, that they could not make too much haste in following the fashion of the times ; especially, as profitable offices and honourable stations might reward those, who were most expeditious in their conformity. That the Roman Catholics of Maryland had, at this period of time, very just cause to apprehend mischief to themselves, subsequent events have fully justified ; and it is therefore probable, that these apprehensions dictated to them their strenuous opposition to any obligation to keep secret the measures of a deliberative and legislative body, (principally composed of their most inveterate enemies,) who might thus secretly lay plans for their destruction.

The journal specifies no other business of any importance, not even relative to any of the numerous laws which they passed at this session, except an objection to the “act of recognition,” which will presently be attended to.

After the proceedings of the 18th of April, the journal commences again with those of the 29th of April, the last day of the session, when—“Both houses declare, that no further secrecy is required, mentioned in the oath, (after the present day of sessions,) taken for that purpose ; neither do they find it any wise requisite.”* This might possibly have been done, to quiet unfounded apprehensions.

“Upon motion of adjourning the house of assembly, it was

* From the expression above—“Both houses,” &c., releasing from the oath of secrecy, it would seem, that the upper house also had taken that oath.

alleged, that all persons bound to attend the assembly ought to be protected from arrests. Whereupon the burgesses desire no protection at all for being burgesses ; but declare the contrary, and desire to be liable to all suits, actions, and arrests." In this, it must be acknowledged, that the members of this assembly exhibited a more dignified independence than those of some former sessions herein before remarked upon.

"And the governor adjourned both houses till the tenth day of January next, unless upon urgent occasion, as the governor shall see cause, proclamation shall issue forth anticipating the said adjournment."*

The first of the acts passed at this session, deserving attention here, besides that for settling the assembly, before stated, was one entitled, "an act prohibiting all compliance with captain William Clayborne, in opposition of his lordship's right and dominion over this province." The cause of making this act is very fully stated in the preamble to it, in which, after reciting the decision of the lords of the council in England on the fourth of April, 1638, and the proclamation relative thereto by the governor of Virginia on the fourth of October, 1638, both of which have been herein before exhibited and remarked upon, it is further stated :—"And whereas further the said captain Clayborne hath of late, by his letters to the present governor of this province, presumed, in an upbraiding insolent threatening manner, to renew his former pretended claims here, in opposition of his lordship's right and dominion, and (as is credibly reported,) gives out in speeches, that he purposeth e'er long to make some attempt upon the isle of Kent against the peace and safety of the province," &c. The act then prescribes the penalty of death and confiscation of property upon any inhabitant of the province, who should presume in any sort to assist, abet, or countenance the said Clayborne or any of his adherents in any attempt whatsoever upon the isle of Kent or any other place within the province.† This corresponds with what has been before observed, that since the death of the late king, the abolition of the house of lords, and the ascendancy of the *independent* party in England, many of whom aspired after the *levelling* scheme, rumours had existed in Virginia as well as in Maryland, that lord Balti-

The acts of
this ses-
sion.

CHAP. V.
1650.

* The proceedings of this assembly, as above stated, were extracted from the book in the council chamber, entitled, "Assembly Proceedings from 1637 to 1658," p. 398.

† See this act at large in note (LXXV.) at the end of this volume.

CHAP. V. more would be deprived of the government of his province.
 1650.

The sentiment expressed by the author of the pamphlet, before cited, entitled, "Babylon's Fall," &c., (written on the occasion, and by one of lord Baltimore's opponents,) strongly intimates what were the general opinions prevalent on the subject. "This royal jurisdiction," says he, "was thought far too high for him, being a subject, and too much unsuitable to the present liberty, which God had given the English subjects, from arbitrary and popish government." Of these general sentiments Clayborne had now resolved to avail himself, and expressing this resolution in threatening speeches in Virginia and in some rude letters to the governor,* he had alarmed the adherents and friends of lord Baltimore in Maryland. They, therefore, endeavoured to fortify themselves, as well as they could, by the terrors of a law on the occasion.

This precarious and doubtful state of lord Baltimore's title and possession of his province seems to have effected the progress of colonizing and settling it. Many of those plantations, which had been "taken up and seated," and holden under certificates of survey, without legal *grants* thereof having passed from his lordship's land office, had been "deserted," and no rents therefor paid to his lordship. As this was deemed by the assembly, not only a "great injury to the lord proprietary in the loss of his rent," but also "very inconvenient to the *commonwealth*,† by hindering others from taking the same up and seating near together for the common security," it was thought proper to apply a remedy to this inconvenience by enacting the law, passed at this session, entitled, "an act concerning deserted plantations;" which authorised his lordship to regrant such lands so "deserted," after the lapse of three years.‡

The Puritans having formed a settlement on the Severn, at a place which they called Providence, now Annapolis, as before mentioned, consisting of a considerable population, and having sent and been represented by their burgesses or delegates at this

* These letters to the governor of Maryland are not now extant at least upon record. Could they be produced, they would afford interesting matter to the historian.

† This word, here used by the assembly, seems to indicate the progress of those *republican* principles across the Atlantic, which had by this time been adopted in the mother country.

‡ As this act has been published at large in *Kilty's Landholder's Assistant*, p. 249, it is deemed improper to swell this volume with the insertion of unnecessary documents.

last assembly, and so far submitting to the proprietary govern- CHAP. V.
ment, an act was passed at this session, entitled, "an act for the 1650.
erecting of *Providence* into a county, by the name of *Ann-Arundel* county." The tenor of this act was, that "that part of the province of Maryland, on the west side of the bay of Chesapeake, over against the *isle of Kent*, formerly called by the name of *Providence*, by the inhabitants there residing, &c., shall from henceforth be erected into a shire or county, by the name of *Ann Arundel* county, and by that name be ever hereafter called."* This is the first act of assembly, and indeed almost the only legislative provision, for the erecting of any county within the province. It is probable, that such regulations for the apportioning of the province into shires or counties were deemed to appertain to the palatinate *regalia* of the lord proprietary of the province, upon the same principle as the counties of England were, originally laid out and divided by the celebrated king *Alfred* under the authority of his royal prerogative.† It will be observed, however, that no limits or boundaries were assigned by this act to the county. As the population of that part of the province was detached from the inhabited parts, and like the *isle of Kent*, now a county, insulated from the rest of the province, such population constituted the limits of the county, until in process of time other counties, being erected adjacent thereto, formed limits to the prior county.

These detached populations had, however, some inconvenience. They became thereby not only more obnoxious to the Indians, but more liable to alarm and more easily assailed by these aborigines. Some acts of assembly made at this last session indicate considerable uneasiness subsisting at this period of time among the colonists on account of some recent murders and captures committed upon them by the natives. Accordingly an act was passed, "prohibiting any Indians to come into *Kent* or

* It was probably so called from the maiden name of lady Baltimore, then late deceased,—Lady Ann Arundel, the daughter of lord Arundel of Wardour, whom Cecilius lord Baltimore had married, as has been herein before stated. Ante p. 193.

† In *Spelman's* Glossary, under the head—*Comitatus, quid ejus origo*, is the following passage. "Rex (Alfredus, qui regnum iniit An. 871,) totius (inquit Ingulphus) Angliæ pagos et provincias in comitatus primus omnium commutavit, comitatus in centurias et hundredas et in decimas, i. e. tithingas, divisit."—Thus we have before seen, (ante p. 376,) that lord Baltimore directed, in virtue of his "Royal Jurisdiction," a county to be laid out, of which Robert Brooke, esqr., was constituted *commander*.

CHAP. V. Ann Arundel counties without notice thereof given.” As these
 1650. acts of assembly, relative to the fears and alarms, which our early colonists experienced from their savage neighbours, become daily more interesting, especially to the inhabitants of the Atlantic states, who gradually become less familiarized to the customs and habits of these savages as they recede from their neighbourhood, it may not be improper to insert in the body of our history some of these legislative measures, adopted by our ancestors, to guard against such their daily impending dangers. The act entitled, as last mentioned, was as follows :

“Whereas two of the inhabitants of Kent and Ann Arundel counties have been lately, in a most barbarous and cruel manner, murdered by certain Indians ;* for the better preventing of the like mischiefs (under God) for the future, Be it enacted by the authority of this present general assembly, that the commanders of the said several counties shall cause speedy notice to be given to all Indians that use to resort or come unto the towns or dwelling houses of any the inhabitants there, and to all other Indians that shall happen to come into these parts or live near at hand, (as with conveniency they may,) that they and every of them refrain coming thither for the future, either to hunt or upon any other occasion [except to]† speak with the said commander upon some urgent occasion, and that before they shall approach too near the towns or habitations as aforesaid, either by land or water, they shall give or make some known sign or token of such their approach for the purpose aforesaid, and in this case all and every the inhabitants of the said several counties are hereby strictly charged and required, as they will answer the contrary at their perils, not to offer any such Indian or Indians any harm or violence, but safely to conduct them, not

* It appears from a treaty made by the Marylanders with the Susquehanocks, within about two years from this period, viz. in 1652, (which will be inserted hereafter,) that all that part of Maryland, which lies between the Patuxent and Susquehanogh rivers on the western shore, and all from the Choptank to the Susquehanogh on the eastern shore, were claimed, having been conquered probably at some period of time prior to this treaty, now unknown, by the Susquehanogh nation of Indians. It is most probable, therefore, that the Indians, who committed the above mentioned murders, were the Susquehanocks, and that the recent settlement of the English, on the Severn particularly, must have given to them additional umbrage and vexation.

† In the record of this act, instead of the two words [except to] within brackets as above, the words—“either to hunt”—are repeated. But as the sense of this clause appears very clearly to have been as above, I have taken the liberty of altering it by inserting the words—“except to.”

being above four in number, to the commander or commanders CHAP. V.
1650.
aforesaid, both in the coming and going; and in case any Indian or Indians whatsoever, after such notice given as aforesaid, shall presume, contrary to the direction herein prescribed, to approach or come unto or near any the towns or dwelling houses before mentioned, it shall be lawful for any inhabitant or inhabitants of either of the said counties, with gun or other weapon to shoot, kill, beat, or take prisoner any such Indian or Indians, any act of assembly or other law or order to the contrary hereof at any time heretofore in any wise made notwithstanding; and all and every the inhabitants of the said several counties are hereby strictly charged and required not to harbour or conceal any Indian or Indians whatsoever, which shall happen contrary to the direction herein before expressed to come unto any of their houses or plantations within the said counties or either of them, upon peril of such punishment or penalty, (not extending to life or member,) as the said commander and commissioners* of either of the said counties respectively shall think fit; and all and every of the inhabitants of the said counties are to yield obedience in all things to the directions of this present act, untill the governor of this province for the time being, by proclamation for that purpose, shall give order to the contrary thereof.”†

This assembly, moreover, not content with this cautionary mode of preventing a reiteration of such murders by the Indians, thought it proper, that some more effectual remedy to such conduct of the natives should be applied; and accordingly enacted, “an order providing for a march upon the Indians,” as follows:

* Throughout the early records of our province the word “commissioners,” when used as above, means—justices of the peace; who were the judges of the county courts in the same manner as in the courts of quarter sessions in England. From this also it may be inferred, that the commander of any county in the province was generally the person first named in the commission of the peace for that county.

† Taken from the record book in the council chamber, entitled, “Assembly Proceedings from 1637 to 1658,” p. 383.—It may probably be worth mentioning here, that a *memorandum* is subjoined to the first act of this session, as they stand on the record, after that “for settling this present assembly,” as follows: “The lower house assented:—William Britton. The upper house hath assented:—Thomas Hatton. Enacted by the governor,—William Stone.” To all the other acts of this session also, are subjoined,—“Assented *ut supra*.—Enacted *ut supra*.” From which it is to be inferred, that each respective act of this session passed through the forms of investigation and assent in the two respective houses—the assembly and council, and finally received the assent and signature of the governor.

CHAP. V. 1650. "Whereas certain Indians this last year have most wickedly and barbarously murdered an English inhabitant of the county of Kent,* and another inhabitant likewise since in Ann Arundel county, Be it therefore ordered, that the governor, with the advice of the council or the major part of them, shall have power, in case such Indians, who have committed such barbarous and wicked murders, shall not be sent in, after demand made of them, to the government here, to receive such punishment as is due for such offence, to press men, and to appoint such allowance for their pay, and to make war upon these nations of Indians refusing to deliver up those offenders as aforesaid, as in his and their best discretion shall be thought fit; the charge of which war to be laid by an equal assessment on the persons and estates of all the inhabitants of this province."

Two children also of a certain Thomas Allen deceased had been, at some time previous to this assembly, captured by the Indians, and some difficulty seems to have arisen with the provincial court, who first took cognizance of the business, in raising money or tobacco sufficient for the redemption of these two unfortunate orphans, which sum amounted to 1500 lb. tobacco; viz. 900 lb. for the eldest, and 600 lb. for the youngest. The administrator of Allen's estate informed the court, that the testator's estate was not sufficient to defray the charge after paying all the debts; and the provincial court having referred the matter to the assembly, the latter made an order, in which, after stating, that "the public charge this year being like to be very great and burthensome," they directed, that the said two children should serve any inhabitant of the province till they attain to their several ages of twenty-one years, as the provincial court shall think fit; such inhabitant paying the said charge of their redemption." It must be confessed, that the circumstances of this order, seem to indicate some deficiency of generous feelings in this assembly on so interesting an occasion.

It would appear, however, that notwithstanding all this warfare with the Indians, or some particular tribe or tribes of them, yet a considerable *trade* was still carried on, either with these hostile Indians, or more probably with some other tribe or tribes, who remained in a state of peace with our colonists. An act

* The isle of Kent is here meant, which had been before erected into a county. The county denominated Kent at this day does not appear to have been inhabited by any English at the time of this session of assembly.

was passed at this session, entitled, "an act concerning trade with the Indians," which contained in substance the following regulations. CHAP. V.
1650.

"1. All inhabitants of the province had free liberty to trade with any Indians, for any beaver, or other commodities, and the same to export (corn excepted,) which could not be exported without special leave from the governor,) paying a tenth in weight or value, for all beaver so traded for, for a custom to his lordship, &c.

"(2.) No such traders to sell any arms or ammunition to any Indians, or quarrel with, or give just occasion of offence to, the Indians, whereby the public peace, &c., might be endangered; nor to enhance the price of corn, to the prejudice of the people; nor to go out upon such trade too weak in strength, or arms, whereby the Indians might be emboldened to do them mischief.

"(3.) Inhabitants of this province, desirous so to trade, were to take out license from the governor, (which was never to be denied upon application,) and give security for observing the provisos above mentioned.

"(4.) No persons, not being inhabitants, were permitted to trade with the Indians, without special license, under the great seal, on pain of confiscation of all goods and commodities so traded with, or for, &c."*

Analogous to this last clause, another "order" was passed this session, entitled, "An order prohibiting *foreigners* to hunt within this province." This deserves mention particularly on account of the word "foreigners;" which, from an expression in the order, viz. "no foreigner, either *English* or *Indian*," &c., must have meant the same as the expression in the last mentioned preceding act, to wit, "no persons, not being *inhabitants*," &c.

This last mentioned order seems to have been intended to prohibit a very mischievous practice, which has been before mentioned, and which, until this session, must have existed in a considerable degree. It was common with the inhabitants of the province to employ *Indians* to hunt and kill deer for them, furnishing them with guns for that purpose. These savages were thus enabled, not only to learn the use of fire-arms, but in some measure to furnish themselves with those arms, pretending that

* The above abstract of the act is from *Bacon's Laws of Maryland*.—This "Act concerning trade with the Indians," seems to have been one of those sent in by his lordship, from his "Declaration, *anno* 1649," before cited.

CHAP. V. they were either lost or destroyed. It gave considerable dis-
 1650. pleasure also to the inhabitants of the province, that "English
 foreigners," (by whom we must understand some of the inhabitants of Virginia to have been meant, perhaps those who resided just across the Patowmack,) had licenses granted to them to hunt deer on the Maryland side of the river. The practice, before mentioned at the last session, also, of turning hogs out into the uninclosed woods or forest, had created a breed of wild hogs, being *unmarked*, became, like deer, lawful game, to be hunted like them under special licenses granted for the purpose. These inconveniences occasioned, not only the passage of the act, relative to hunting deer by the Indians and foreigners, as just stated, but also a renewal or revival at this session of the "order," entitled, "An order for recording the mark of cattle and hogs." To enforce which acts, it may be here mentioned, that governor Stone issued a proclamation on the same day on which the assembly rose, to wit, on the 29th day of April, (1650,) for revoking and making void all licenses heretofore granted for the preceding purposes.*

Most of the acts of this session of 1650, of a political complexion, appear to have been, as before stated, some of those acts sent in by his lordship for the assent of the assembly; which acts, although they were not admitted by the assembly *in toto*, as his lordship directed, yet were culled and some of them selected and passed at this session of 1650. Among them was the act entitled, "An act of recognition of the lawful and undoubted right and title of the right honourable *Cecilius* lord baron of Baltimore, *absolute lord* and proprietary of the province of Maryland, unto the said province, and unto all islands, ports, and creeks, to the same belonging." The preamble to this act, however, is couched in such flattering terms personally to his lordship, that we can hardly suppose it to have been so penned under his lordship's inspection in England, but must have been superadded by some of his faithful tenants in the colony, perhaps by the secretary of the province—Mr. Hatton;—as follows:

* Another proclamation for recalling these "licenses and warrants" was issued by the governor on the 20th of November, 1650, in which the inconveniences resulting from these licenses, &c., are more clearly stated,—that "this *county* of St. Mary's and the parts adjoining are very much pestered with great concourse of Indians from several parts, to the annoyance and terror of divers of the inhabitants here, and excessive waste and destruction of the *game* of this province, and dispersing and scattering of the cattle and hogs of the inhabitants."—Council Proceedings from 1636 to 1657, p. 253.

"Great and manifold are the benefits, wherewith Almighty God hath blessed the colony, first brought and planted within this province of Maryland, at your lordship's charge, and continued by your care and industry in the happy restitution of a blessed peace unto us, being lately wasted with a miserable dissention, and unhappy war. But more inestimable are the blessings thereby poured on this province, in planting *christianity* among a people, that knew not God nor had heard of Christ.* All which we recognize and acknowledge to be done and performed next under God, by your lordship's industry and pious intentions towards the advancement and propagation of christian religion, and the peace and happiness of this colony and province: So we doubt not, but our posterity will remember the same, with all fidelity, to the honor of your lordship and your heirs forever." It is then enacted, "That we being bound thereunto, by the laws both of God and man, do recognize and acknowledge your lordship's just title and right unto this province, by the grant and donation of the late king Charles, of England, &c. And do also recognize and acknowledge your lordship to be true and ~~absolute~~ lord and proprietary of this province. And do humbly submit unto all power, jurisdiction, and authority, given, granted, and confirmed unto your lordship and your heirs, in and by the said grant and donation: And do hereby submit and oblige us, our heirs and posterities forever, *until the last drop of our blood be spent*,† to maintain, uphold and defend your lordship and your heirs, lords, and proprietaries of this province, in all the ~~legal~~ rights, jurisdictions, authorities, and preheminencies, given, ~~granted~~, and confirmed unto your lordship, by the said grant and donation, so far as they do not in any sort infringe or prejudice

* With what absurd pertinacity is this false and unfounded sentiment held forth even at this day! With the exception of a few individuals brought up and educated among the whites, the Indians generally continue to reject the system of *christianity* with disdain, and in the few instances wherein they conform to its ceremonies they adopt only its superstitious concomitants, their moral principles remaining unimproved. Were a total prohibition enacted by law against missionaries being permitted to go among them, and instead of them artisans and agriculturists sent, with strong injunctions to refrain from the propagation of any religious opinions, the *sense* and *reason* of these savages would be addressed, and not their *imagination*s. They would then, most probably, perceive the advantages of civilization. But even civilization communicated to them would be rather a curse than a blessing, if their country is to be entirely taken from them.

† This strong expression seems to be further proof, that this act was modified by some friend of lord Baltimore after it was sent in. His lordship himself would hardly have introduced such an expression into a law of his own framing and propounding.

CHAP. V. *the just and lawful liberties or privileges of the free born subjects*
 1650. *of the kingdom of England."*

From "his lordship's Declaration, *anno* 1649," as before stated, it appears that the assembly of the last session, to wit, in 1649, had refused to pass this act on account of the two exceptionable expressions in it,—*"absolute lord and proprietary,"* and *"royal jurisdiction."* Why the assembly of this session, of 1650, now assented to it, as it is, with those expressions in it, we have no authority or foundation even for conjecture. If these objections emanated from the Puritans within the province, as they appear to have been subsequently entertained by them,* it is more difficult to account for the passage of the act at this session than the former; for, at this session they had burgesses or delegates from their settlement at Providence, but none at that of 1649. The saving of the *"liberties and privileges of English subjects,"* at the end of the clause, might have been inserted in the original act sent in by his lordship; for, by the fifth section of the charter, lord Baltimore and his heirs were *"created and constituted the true and absolute lords and proprietaries of the region aforesaid,"* (to wit, Maryland,) *"saving always the faith and allegiance and sovereign dominion due to us,"* (the king) *"our heirs and successors,"*—which *saving* in the charter seems to be synonymous to that in the act.

His lordship's declaration, (*anno* 1649,) before mentioned, seems to intimate also, that another act of this session, entitled, *"An act against raising of money within this province without consent of the assembly,"* was one of those sent in by him. If so, there arises at once a strong presumption against the validity of an argument, which was raised by some lawyers of Maryland, at the commencement of the American revolution, that this act of assembly, inasmuch as it expressly exempted *"the freemen of this province,"* from any *"subsidies, aids, customs, taxes, or impositions"* to be laid upon them *"without the consent and approbation of a general assembly of this province,"* exempted them from *parliamentary* taxation. In reply to which it might be observed, that if this act emanated solely from the will of lord Baltimore, he had no power or authority to exempt the inhabitants of this province from the legislative powers of the parliament of England; nor, could the assembly itself

* See the quotation from Leonard Strong's pamphlet, entitled, *"Babylon's fall,"* &c., ante, p. 371.

or the inhabitants of the province themselves, deprive, by their own legislative act, the English parliament of any powers which they before had. But it is most certain, that this act, to whomsoever it might owe its origin, was not meant by any one, at the time of its enactment, to have any relation to the powers of an English parliament in imposing taxes upon the colony of Maryland. It is most probable, that his lordship, on account of some former attempts by him to legislate for the province without the intervention of the assembly, had created jealousies and given his enemies (the Clayborne faction,) ostensible grounds to raise a clamour against his proprietary rights. To conciliate the good will of his colonists, and to give them assurances, that he meant not for the future to exercise even the semblance of arbitrary power, especially in taxation, he sent them this act of assembly; to which, without doubt, they readily, when met in assembly, gave their assent. That the act could have no allusion to the power of the English parliament is evident from the preamble of it. “Forasmuch as *the strength of the lord proprietary* of this province doth consist in the love and affection of his people, on which *he doth resolve* to rely upon all occasions,* for his supplies both by sea and land, not doubting of their duty and assistance upon all just and honourable occasions, be it enacted, &c.” It might be added also, that neither lord Baltimore in England, nor his colonial assembly in Maryland, in these times, especially in the year 1650, when the government of England was a democratic republic, and the parliament every thing, with Cromwell and his army to back them, would have had the assurance and effrontery to call in question the powers of the English parliament as it then existed. This opinion seems to be corroborated by subsequent events; particularly by an ordinance of the English parliament of this very year, passed October 3d, 1650, “for prohibiting trade with Barbadoes, *Virginia*, Bermuda, and Antago.” This prohibition of the trade of these colonies was intended as a punishment for their rebellion against the English parliament, and the *preamble* of the ordinance is declaratory of a very different construction of their powers than our act of assembly was supposed to intimate. It states, that “whereas the islands and *other places in America*, where any English are planted, are and ought to be subject to and dependent

* This *resolution* of future conduct seems to intimate, that the whole of this act was penned either by his lordship or under his inspection in England.

CHAP. V. upon England, and hath, ever since the planting thereof, been and ought to *subject to such laws, orders, and regulations as are and shall be made by the parliamant of England.*"* This declaration does not seem to confine their powers to the "regulation" of *trade* merely, but to extend them "to laws and regulations" in all cases whatsoever; and, therefore, to include laws of taxation. This parliament were not in the habit of uttering empty words; they followed up this ordinance with the "reducement," as it was called, not only of the West India islands and Virginia, but even of unoffending Maryland; as will presently be seen.

The next act of this assembly also, in the order of publication, entitled, "an act concerning the levying of war within this province," was, from his lordship's declaration, before stated, one of those acts sent in by him. The first section thereof enacted, "that if the lord proprietary, or his lieutenant, or governor, should, at any time hereafter, make any war out of the limits or precincts of this province, without the consent and approbation of the general assembly of this province first had and declared, the freemen of this province shall be no way obliged or compelled, against their consents, to aid or assist with their persons or estate in the prosecution or maintenance of such war.

"*Sect. 2.* That no martial law shall, at any time hereafter, be exercised within this province, but only in times of camp, or garrison, and that within such camp or garrison.

"*Sect. 3.* That all charges arising by defence of this province against any invasion, insurrection, or rebellion, shall be defrayed by this province, by an equal assessment upon the persons and estates of the inhabitants thereof."†

This act was, without doubt, intended by his lordship, as one of those conciliatory measures, which he was now practising in order to regain the "affections of his people," and was most probably the result of some just complaints, which had existed within the province, on the subject of martial law. To take planters from their civil employments on their plantations and compel them to the performance of military duties as soldiers,

* The substance of the enacting part of this ordinance is in *Hazard's Collections*, vol. 1, p. 636, but the *preamble* thereto, containing the above declaration, is unaccountably omitted. That part of it, however, quoted above, is to be found in the same volume, p. 559, stated in the "Province of Maine's Petition." It is also stated by *Chalmers* in his *Annals*, p. 122, and by *Robertson* in his *Hist. of America*, vol. 4, b. ix.

† This and the preceding act, published at large in *Bacon's Collection*, 1650, ch. 25 and 26.

and subject them to the summary adjudications of martial law, CHAP. V.
is a despotism inconsistent with rational human liberty in a state 1650.
of society.

The act, passed at this session also, entitled "an act for taking an oath of fidelity to the lord proprietary," seems to have been rendered, by subsequent events and complaints, one of as much notoriety as any of those before mentioned, which were passed at this last session. The oath prescribed by this act varies considerably from the oath of fidelity, before stated, prescribed by his lordship to be taken by every person, who would obtain the grant of any lands, and which was so obnoxious to the Puritans.* One of their objections to the former oath has been before mentioned, that is, that the words—"absolute lord" and "royal jurisdiction," were "thought far too high for a subject to exact, and too much unsuitable to the present liberty, which God had given the English subjects, from arbitrary and popish government, as the lord Baltimore's government plainly appeared to be."† These objectionable expressions were now carefully expunged from the oath now prescribed by this act of assembly; and a new clause inserted, somewhat bordering on mental reservation, so as at all convenient times to admit of equivocal meaning, to wit, "that they would defend and maintain all such his lordship's *just and lawful*‡ right, title, interest, privileges, jurisdictions, prerogatives, propriety, and dominion over and in the said province, &c., not any wise understood to infringe or prejudice liberty of conscience in point of religion."§ This infringement of liberty of conscience alluded to a second objection to the oath of fidelity prescribed by his lordship; which second objection has been thus expressed by the agent of the Puritans.||—"Secondly. The oath," (meaning the oath of fidelity first prescribed by his lordship,) "was exceedingly scrupled on another account, viz: that they must swear to uphold the government and *those officers*, who are sworn to countenance and uphold anti-Christ, in plain words expressed in the

* See a copy of the former oath prescribed by his lordship in note (LXIX.) before referred to.

† Leonard Strong's "Babylon's Fall in Maryland."

‡ These words, "just and lawful," not in the former oath, would at all times leave open a door to let in a convenient objection to any of his lordship's privileges, rights, or interests within the province.

§ See a copy of the oath prescribed by this act of assembly of 1650, in note (LXXVI.) at the end of this volume.

|| Leonard Strong, in his "Babylon's Fall," &c.

CHAP. V. *officers' oath, the Roman Catholic religion.* And for these peo-
 1650. ple to own such by an oath, whom in their hearts they could by no means close with; what could it be accounted but collusion?" This plainly referred to the oaths of office before mentioned,* to be taken by the governor and each of the council, who were *Protestants*: to wit, that they were to bind themselves by oath—"not to trouble or molest, directly or indirectly, any person whatsoever in the said province professing to believe in Jesus Christ, and in particular no *Roman Catholic*, for or in respect of his religion." To this objection it was very properly replied by lord Baltimore's friend,†—"This oath was never *imposed* upon any body, nor any penalty appointed for the refusall thereof; for, it was free for any man, if hee did not like the oath, not to accept of the place of governor or one of the council there. Lord Baltimore appointed this oath to be taken by the aforesaid officers, when he made captain *Stone* governour and Mr. *Thomas Hatton* secretary, and other of his counsell there, who being of different judgment in religion from himselfe, his lordship thought it but reasonable and fit, that as he did oblige them by oath not to disturbe any there, who professed to believe in Jesus Christ, so to expresse the *Roman Catholickes* in particular, who were of his own judgment in matter of religion." This second objection, which was solely directed against the Roman Catholics, was one, among numerous proofs of those times, that these Puritans, though perpetually vociferating their clamours for *religious liberty*, were really hostile to every liberal sentiment on the subject of religion. It strongly corroborates the remark of *Hume* upon them:—"They maintained, that they themselves were the only pure church; that their principles and practices ought to be established by law; and that *no others ought to be tolerated.*"‡ With what propriety, therefore, can it be trumpeted forth, as it is at this day, in every newspaper of the United States, that these people were persecuted and driven from their native country to seek an asylum in the wilds of America?

The act of assembly, however, of this session, "for taking an oath of fidelity to lord Baltimore," was the work of the Puritans themselves. It is certain, that they had a preponder-

* In p. 335-6, and in note (LXII.) and (LXIII.)

† Mr. John Langford, in his "Refutation of Babylon's Fall," &c.

‡ *Hume's Hist.*, in his Appendix to the reign of James I.

ating influence in the house of burgesses or delegates of this session. And, although the laws of this session, (of 1650,) bespeak much moderation, and perhaps political wisdom, yet this might have been the result of what appears to have been the fact, that the religious parties in the province were at this time nearly balanced. The Puritans settled at Providence; to the amount perhaps of about a hundred, were exceeded in population by those of the county of St. Mary's, whom we may suppose to have been for the most part Roman Catholics. Policy, therefore, evidently dictated to these Puritans, thus newly settled in the province, to adopt some degree of moderation in their conduct. But, when the strong arm of the mother country was stretched out in their behalf, and Maryland with Virginia and the other colonies, was "reduced" to a submission to the Puritanic parliament of England, these Puritans then exhibited their propensities to arbitrary power; as the sequel of this history will shew.*

With this view of the state of parties at this time within Maryland, we can easily reconcile the enacting clause in this act of assembly, which prescribes the penalty on a refusal of this oath. It is in substance thus expressed:—"Every inhabitant of this province, above the age of sixteen years, who has, or shall from time to time have, any estate in lands within this province, and be at any time in person within the same, shall take the oath here under mentioned.† On refusing the same he is to be expelled and banished this province, and not to return again without leave. Persons expelled or banished for such refusal, or shall afterwards return without leave and refuse the same, shall be subject to such fine and imprisonment, as the lord proprietary, his lieutenant, or chief governor or privy council of this province, or the major part of them, shall think fit." The lord proprietary's lieutenant and privy council constituted at this time the *provincial court*, the supreme court of the province, so that the penalty was indeed nothing more than that punishment which the common law of England vests in all its courts in cases of *misdemeanor*:—fine and imprisonment at the discretion of the court. But, if we are to believe Mr. *Langford*, who wrote within a few years after this period, (viz. in 1655,) "no person within the province was ever yet banished or fined

* See note (LXXVII.) at the end of this volume.

† The oath before stated in note (LXXVI.) at the end of this volume.

CHAP. V. for refusal of it; only they would have no land granted them
 1650. from his lordship, unless they took it."

Among those laws sent in by his lordship and passed by this assembly, or recorded among its legislative acts, not hitherto herein noticed, was that entitled "an act of oblivion." By this act was granted a free pardon of all offences, capital or other, and an abolition of all actions tending to recover damages for any fault committed against any one in his lordship's peace, &c. by any of the party, who were in rebellion against his lordship's government here, at any time between the 15th of February, 1644, and the 5th of August, 1646—excepting *Richard Ingle* and *John Durford*, mariners, and such others of the *isle of Kent* as were not pardoned by his lordship's brother, Leonard Calvert, esq., deceased, &c. Also, that no contract entered into with any one in that rebellion should be enforced. "And for the preserving of peace and amity, all reviling speeches, practices, or attempts, tending to the disturbance of the amity desired and intended, and all reviling and upbraiding others with matter of plunder, rebellion, or other odious or reproachful terms for any matter or thing, pardoned by his lordship or abolished by this act, be utterly forborne and laid aside, upon pain of imprisonment during pleasure, fine, banishment, stocks, pillory, whipping, any one or more of these as the lieutenant or chancellor and council of this province for the time being, or the major part of them then being in court present, whereof the said lieutenant or chancellor, or their respective deputy, being always one of the said council, to be always one, and to have a casting voice, shall think fit." This was one of the conciliatory measures of his lordship to restore himself to the "affections of his people," and to counteract the threats of depriving him of his province.

The only remaining laws of this session, deserving notice, are two, remarkable for their attention to what may be called the domestic policy of the province. One, entitled, "an order for the relief of the poor," and another, entitled, "an act concerning the registering of births, marriages, and burials." In respect to the former, it has been observed by a learned annalist,* that this order was "the first notice that any *such* existed" within the province. Europeans still continue in the delusion, that no one can possibly starve in this land of promise. Alas! every landholder in Ma-

* Chalmer's Annals, p. 221.

ryland at this day can testify, that England is not the only country in the world, where the relief of the poor becomes the burthen of the rich, or the support of the idle vagabond is the oppression of the industrious citizen. As to the latter act; as long as civil society consists of an aggregation of families, and property is allowed to be descendible, such a law is essentially necessary; and it must be always of political importance to rulers to be apprised of the increase or decrease of the population over whom they rule. But our statesmen of Maryland, at this day, think these subjects below the *dignity* of a republican legislature.

After this last session of assembly, the affairs of the province seem to have subsided into apparent peace and quiet. The Puritans of Providence appear to have acquiesced in and submitted to the proprietary government at St. Mary's. Our documents do not furnish us with any material occurrence within the province for several months until the governor's visitation in July of this year to the settlement at Providence for the purpose of organizing it into a county. The reader will observe, that there were now three distinct settlements formed within the province, at some distance from each other. The inhabitants of St. Mary's county forming the principal part of the population of the province, retained with themselves the seat government. Those of the *isle of Kent*, though prior in time, yet being fewer in number, had been organized, some years before this, into a separate county, under the special superintendence of an officer, called a *commander*. It is not easy at this day to define with exactness the extent of the powers of this officer. He appears to have been somewhat in the nature of a deputy to the governor of the province, on account of the insular and detached situation of the inhabitants of that part of the province, and to have been invested by the tenor of his commission with all the governor's military as well as civil powers, as to that particular county, though subordinate to the superior powers and appellate jurisdiction of the governor and council at St. Mary's. This will be more particularly understood from the commission to Mr. Robert Vaughan, to be *commander* of the isle of Kent, as herein before stated.* A similar commission was now issued by the governor, while on his visit at Providence, directed "to Mr. *Edward Lloyd*, gent.," appointing him "to be commander of Ann Arundel

* See before, pp. 304, 305.

CHAP. V. county, until the lord proprietary should signify to the contrary,"

1650. and to Mr. James Homewood, Mr. Thomas Meares, Mr. Thomas Marsh, Mr. George Puddington,* Mr. Matthew Hawkins, Mr. James Merryman, and Mr. Henry Catlyn,† "to be *commissioners*‡ of the said county with yourself,§ for granting warrants and commissions, and for all other matters of judicature, with whom you are to consult in all matters of importance concerning your said county ; and you are to call and appoint courts to be kept within and for the said county ; in which courts you the said commander, or your deputy, (being one of the said commissioners,) with any three or more of the said commissioners there present, from time to time are to hold pleas, and finally to determine all causes and actions whatsoever civil, happening or arising between any of the inhabitants of the said county, of what value soever, saving and reserving to all and every the inhabitants of the said county and others liberty of *appeal* from the said county court to the provincial court in any civil cause or action to the value of £20 sterling or 2000 lb: tobacco, and upwards, the party so appealing first putting in sufficient security to the said county court to be answerable for treble damages in case the order or judgment of the said county court, made in that cause, shall happen to be confirmed upon hearing by the provincial court ; and also to hear and determine all matters criminal happening and committed in the said county, which may be heard by justices of the peace in any county in England in their courts of session, not extending to life or member ; and further to do, use, and execute all manner of jurisdiction and authority whatsoever for the conservation of the peace within the said county, as any justice of the peace in England may or ought to do, by virtue of his commission for the peace ; further likewise authorising you the said commander, or your said depu-

* Mr. Puddington had been one of the burgesses or delegates at the last session of assembly.

† The names of these gentlemen are here stated, principally with a view of gratifying the reader, who may be a native of the province, in his curiosity to know the names of those persons, who were, as may be inferred from the above commission, the principal men among the Puritans who first settled on the Severn, and from whom many respectable families in this state now deduce their descent.

‡ In all commissions in the provincial records, similar to the above, the word, *commissioners*—means justices of the peace.

§ That is, with Mr. *Edward Lloyd*, to whom the commission was directed, as above.

ty, to elect and appoint all necessary officers for the execution of **CHAP. V.**
 justice and conservation of the peace there, with allowance of 1650.
 such fees as are usually belonging to the same or the like officers
 in *Virginia*; and to do all other things and acts, which shall be
 necessary for the execution of the powers and jurisdiction here-
 by committed unto you. Given at *Providence* this 30th day of
 July, 1650.—*William Stone.*"*

As lord Baltimore's regulations of his land affairs within the The com-
 province are, on some occasions, necessarily connected with the manders of
 political history of the province, it will be proper to mention the isle of
 here, that governor Stone, while he was now at Providence on the Kent and
 Severn on the 29th of July, the day preceding the date of the fore- Ann Arun-
 going commission, issued two several commissions, one to each of del to grant
 the commanders of the isle of Kent and Ann Arundel, respectively, warrants
 authorising them, each in their respective counties, "to grant for land
 warrants for land within the said county to any adventurers or therein.
 planters according to his lordship's conditions of plantation,
 whereupon such land shall happen to be due to such adventurers
 or planters respectively, they the said commanders causing the
 said warrants together with the particular demands or assign-
 ments upon which the same shall be granted, to be entered upon
 record by his lordship's secretary of the said province."† The
 neglect of these commanders in performing the duties assigned
 to them by these two last mentioned commissions, relative to the
 grants of land, subsequently occasioned some uneasiness to the
 proprietary government, as will be seen in its proper place.

Before we close our narration of the historical events of Ma- King
 ryland for the present year, (1650,) some mention must be made Charles
 of the displeasure which the permission of the governor of Ma- the second
 ryland to the Puritans, who had been expelled from Virginia by appoints a
 Sir William Berkeley, to form a settlement within the province new go-
 of Maryland, had given to the young king Charles the second. vernor of
 As lord Baltimore had instructed those, who administered his Maryland.
 government in Maryland, to grant a general toleration to all
 sects of religion whatever, as has been herein before stated, part
 of this royal displeasure must have been directed against lord
 Baltimore himself. It seems to have been expressly granted to
 his lordship, by his charter from Charles the first, that he (lord

* "Council Proceedings from 1636 to 1657," p. 283.

† See a copy of one of these commissions, (viz. that to captain Vaughan,) in
Kilty's Landholder's Assistant, p. 75.

CHAP. V. Baltimore) should have the exclusive power of constituting and appointing his own deputy, or lieutenant, or governor of his province, as well as all such other officers and ministers of the province, as to his lordship should seem most fitting. He had accordingly hitherto exercised that power in the appointment of his brother and other subsequent governors. But the young king, though in exile on the continent, being informed of this toleration of the Puritans in Maryland, as well as of the contrary conduct of Sir William Berkeley in Virginia, undertook to deprive lord Baltimore of this power of appointment, by granting his own royal commission to Sir *William Davenant*, "constituting him governor of the said province," (of Maryland,) "alleging therein the reasons to be, because the lord Baltimore did visibly adhere to the rebels in *England*, and admitted all kind of sectaries and schismatics, and ill-affected persons, into that plantation."* This commission to Sir William Davenant was most probably granted by his majesty at the same time and at the same place as that which he transmitted from *Breda*, in June, 1650, to Sir William Berkeley to be governor of Virginia.† But we have no information, at this day, that Sir William Davenant ever availed himself of this commission, or left Europe on that account to embark for this country. It is probable, that the unfortunate events of the royal cause in Great Britain for some succeeding years, and the high handed measures now adopted by the parliament towards their American colonies, particularly in their ordinance of *October* of this year, (1650,) for punishing their rebel colonies, and their subsequent "reducement" of both Virginia and Maryland, prevented Sir William Davenant from ever attempting to exercise any power under this commission.‡

The appointment of Mr. Gibbons, of

It may be mentioned here as some corroborating evidence of the preceding charge against lord Baltimore, at least of his policy at this time in paying court to the Puritans, that *Edward Gib-*

* This fact is so stated by Mr. John Langford, in his "Refutation of Babylon's Fall," &c., before referred to. The commission to Sir William Davenant does not appear to be extant on our records.

† See *Chalmers's Annals*, p. 122.—It may be some illustration to the above to mention also, that prince Charles, before his father's death, in the year 1647 or 1648, granted a commission, with his father's privity and consent, who was then a prisoner, to lord Willoughby of Parham, to be governor of Barbadoes, who had previously contracted with the earl of Carlisle, the lord proprietary of the island, for the government thereof.—See *Edwards's Hist. W. Indies*, vol. ii. pp. 19, 20.

‡ See note (LXXVIII.) at the end of this volume.

bons, esqr., a gentleman who had been of some note and consideration for several years past in Boston in New England, was now, by commission bearing date, January 20th, 1650, (1651, N. S.) appointed to be one of the council of Maryland, and justice and commissioner for conservation of the peace, and "to be our *admiral* of our said province of Maryland, under us and our lieutenant," &c. The commission, as recorded, is directed to "Edward Gibbons, esqr., *major general of New England*;"* which seems to identify him as being the same gentleman, whose name occurs on frequent important occasions in the history of Massachusetts. He is there represented as being "a gay young gentleman," who, together with some others, "of some eminence, with thirty servants," under the command of a certain captain Wollaston, emigrated to Massachusetts, in the year 1625. They settled at or near to the place now called Braintree, and, not being Puritans, but supposed to be of the Church of England, were in the habit of occasionally amusing themselves with old English sports, such as dancing round a may-pole on a May morning.† Wollaston, and the greater part of his men, were consequently soon driven out of New England, and they came to Virginia, a place more congenial to such "ungodly habits." Mr. Gibbons, however, remained behind, conscious, perhaps, that he was formed of more pliant stuff. Happening to be present at the formation of the church at Salem, in 1629, when Higginson and Shelton were ordained ministers thereof, he is said to have been so affected with the solemnity of the proceeding, that he suddenly received the grace of God, was converted to a Puritan, and requested to be admitted as a member of the church. He afterwards joined the church in Boston, and, from the number of important trusts which he subsequently bore in Massachusetts, he must have become, externally at least, a zealous Puritan. At the first formation of the confederation of the united colonies of New England, in 1643, he was appointed one of the commissioners, on the part of Massachusetts, to sit in that congress.‡ When the commissioners of the united colonies, sitting in August, 1645, had resolved to make war upon the Narraganset Indians, they appointed major Gibbons commander in

* The commission is recorded in "Council Proceedings from 1636 to 1657," p. 237.

† Hutchinson's Hist. of Massachusetts, vol. 1, p. 15, 150.

‡ It appears, that he was also at that time one of the deputies or members of the general court or assembly of Massachusetts. Hutchin's. Hist. vol. 1, p. 120.

CHAP. V. chief "of all such forces as should be sent forth of the several colonies."* In the year 1650, (prior to his appointment in Maryland,) he had been made also one of the assistants or council to the governor of Massachusetts. What induced lord Baltimore, or those who administered the government of Maryland, if it was not the act of his lordship, to place him at once in so conspicuous a situation in this province, we have no authority to determine or *data* to infer from. He had been deeply concerned with *La Tour*, in 1643, and for some years after in his (*La Tour's*) contest with *D'Aulney*, about their respective rights to the French province or government of *Acadié*. *D'Aulney* having succeeded in expelling *La Tour* from his settlement at St. John's, and capturing his goods and merchandize there to the amount, it is said, of £10,000 sterling, Gibbons lost the whole of his debt from *La Tour*, for the hire of ships, &c., to the amount of £2500. It is not impossible, that this might have induced him to turn his attention to the repairs of his fortune in some other part of the British colonies. It would seem, that with that design he made a friend of lord Baltimore. Having become indebted to him, most probably by loan, in the sum of £100 sterling, he settled in St. Mary's, and, as may be inferred from circumstances, died there about the last of the year 1655 or the first of 1656; where he left a widow, who, in satisfaction of the said debt, assigned to his lordship a wind mill belonging to her husband, (possibly the last remains of his shattered fortunes,) which he had probably built there as an humble resource for a livelihood. Whether he renounced *puritanism* or not, we have no authority to determine. But it seems, that he did not consider a Popish lord so greatly anti-christain, as to induce him to disdain the acceptance of favours at his hands.† This notice of him has been here made, with a view to illustrate the proceedings of lord Baltimore, or his government in Maryland, in regard to the toleration, and indeed promotion, of men of religious professions widely different from the Roman Catholic.

An assam- Our provincial documents afford us, at this period, but few
bly called. events or transactions worthy of notice. There seems to have been at this time within the province, a solemn stillness, like

* See his commission and instructions, bearing date the 19th of the 6th month, 1645, among the "records of the united colonies."—*Hazard's Collections*, vol. 2, p. 83, 84.

† See lord Baltimore's instructions of the 23d of October, 1656, hereafter inserted.

that which sometimes in nature precedes an approaching storm. CHAP. V.
 A similar tempest was now impending over the heads of those, 1651.
 who administered the government of lord Baltimore within his province. Governor Stone, it seems, agreeably to annual usage, had called an assembly to meet at St. Mary's in March of this year; (1651, N. S.,) which accordingly met on the eleventh of March, (1650, old style, as stated in the record;) but from strong circumstances it is to be inferred, that the Puritans of Providence, (or Ann Arundel,) refused or neglected to send any delegates or members to attend that assembly. It is probably owing to this non-attendance of those members, that few laws were passed at this session. Three only, relative to officers' fees and county or provincial levies, appear to have been enacted; of these the first of them only seems to be of any importance.* No journal or account of the proceedings of this assembly appears on record.† This may possibly be imputed to the succeeding disturbances and contests in the province, during which little care seems to have been taken for the preservation of any records of the passing events of the day.

There are strong grounds for supposing, that reports were now prevalent in the province, and perhaps eagerly believed and propagated by the little band of Puritans settled on the Severn, The ordinance of parliament of 1650.
 that there would shortly be, as his lordship himself subsequently expressed it,—“a dissolution or resignation in England of his patent and right to the province.”‡ The ordinance, or act of parliament, before mentioned, of the 3d of October, 1650, for the prohibition of all trade or intercourse with *Virginia* and the West India islands, therein mentioned, for their “divers acts of rebellion,” therein stated, was most probably one principal cause in originating these reports. There was a particular clause in that ordinance, (section 5th,) which seemed ominous to Maryland as well as Virginia. It provided,—“That the council of

* Mr. Kilty, in his *Landholder's Assistant*, p. 84, has observed, that in the first one of these laws, entitled, “an act concerning the secretary's and clerk's fees,” the first notice is to be found of a distinction between *common* and *special* warrants, as referring to the location of lands; in which it was directed, that these officers should be allowed for every *extraordinary* or *special* warrant double the fee of an *ordinary* or *common* warrant.—N. B. The act is stated erroneously in his book, as of 1750, when it was in 1650: but this must have been an error of the press, or in copying.

† See *Bacon's Collection of the Laws of Maryland*, under the date of March, 1650.

‡ This appears from lord Baltimore's message or address, of August 20th, 1651 hereafter stated.

CHAP. V. state shall have power to send ships to any of the plantations
 1651. aforesaid, and to grant commissions to such persons as they shall think fit, *to enforce all such to obedience, as stand in opposition to the parliament*, and to grant pardons, and settle governors in the said islands, plantations, and places, to preserve them in peace, until the parliament take further order.”—When the council of state came to act under this ordinance, as they did in the succeeding year, (1651,) no question appears to have been entertained, whether power was not thereby given to them “to enforce” Maryland “to obedience;” but only whether or not *Maryland* should be expressly comprehended in the instructions to the commissioners for the “reducement” of the colonies. Hence this ordinance has become the leading state paper in the history of the conduct of the parliament at this time towards the English colonies in America, and the foundation of those subsequent violent proceedings towards Maryland, as well as the other colonies therein expressly included.* To this ordinance, then, we may trace the origin of those “reports” which are said to have been now, (in the commencement of the present year, 1651,) circulating in Maryland, relative to a dissolution of the proprietary government thereof. Emboldened by these reports, those inhabitants of Maryland, who were disaffected to the pro-

*This ordinance, as a state paper, ought properly to be here inserted; but as none of the ordinances during the *usurpation* in England appear in any of the editions of the English statutes at large, and *Scobell's* Collection thereof, published in 1658, is scarce, if at all, in America, the difficulty of obtaining a correct copy compels the omission of it. The copy of this ordinance, as published in Hazard's Collections, vol. 1, p. 636, purporting to be taken from Hughes's Abridgment, edit. 1657, is very imperfect. The preamble to it is there entirely omitted; although it contains a more important principle than any statute or ordinance ever made by an English parliament in relation to their colonies in America. The *substance* of this preamble, however, as well as the body of the act, is stated by *Chalmers*, in his Annals (p. 122,) thus:—“That in Virginia, and divers other places in America, there are colonies, which were planted at at the cost, and settled by the people and by the authority, of this nation, which are and ought to be subordinate to, and dependent upon, England; that they ever have been, and ought to be, subject to such laws and regulations as are, or shall be, made by the parliament; that divers acts of rebellion have been committed by many persons inhabiting Virginia, whereby they have most traitorously usurped a power of government, and set up themselves in opposition to this commonwealth.” Least, however, it might be said, that this *Chalmers* was a Scotchman, a tory, and a refugee, and his authority invalid, it may be added that the substance of the same preamble is stated, in nearly the same words, by *Robertson*, in his Hist. of Virginia, and also in a document published in *Hazard's* Collections, (vol. 1, p. 559,) entitled,—“Province of Maine's Petition to the council of the state in England.”

proprietary government, particularly the Puritans settled on the Severn, conceiving that such "dissolution" of that government was fast approaching, refused to send delegates to meet in the general assembly to be held in March at St. Mary's, as before mentioned. It will be recollected, that governor Stone had, by his commission of the 30th of July of the preceding year, (1650,) appointed Mr. Edward Lloyd to be "commander of Ann Arundel county." Such commander was, agreeably to the usage of the province at that time, as had been before in respect to the isle of Kent, the returning officer of those burgesses who might be elected as delegates to meet in the provincial assembly. But Mr. Lloyd, as it appears, acting most probably in conformity to the wishes of those over whom he presided as commander, returned some message "to the general assembly then sitting at St. Mary's, which gave considerable displeasure to the government at St. Mary's, or at least to lord Baltimore in England, when he came to be informed of it; who expressed his resentment at the message somewhat warmly, in his subsequent letter to the assembly. What this message was, is not now to be exactly ascertained, no copy of it remaining on record. We are authorised, however, in collecting from what his lordship wrote upon the subject, that the purport of Mr. Lloyd's message was, that the inhabitants of Ann Arundel county, which they themselves called Providence, had come to a resolution of not sending any burgesses or delegates to the general assembly at St. Mary's, notwithstanding the summons for that purpose. This stand was, without doubt, taken with a view to the expected dissolution of the proprietary government, as before mentioned, and was probably meant by them as a prompt manifestation of their willingness and desire, that Maryland, as well as Barbadoes and Virginia, should be "reduced" to the obedience of the commonwealth of England.

An account of this conduct of the Puritans on the Severn was in due time transmitted to lord Baltimore in England; who, in return, sent back his letter, or message, addressed to "William Stone, esqr., his lieutenant of his said province of Maryland, and to his right trusty and well beloved the upper and lower houses of his general assembly there, and to all other his officers and inhabitants of his said province," bearing date "the twentieth day of August, one thousand six hundred fifty and one." In this letter, his lordship, after expressing his "wonder at a message which he understood was lately sent by one Mr. Lloyd,

CHAP. V.
1651.

The colony at Providence refuses to send delegates to the assembly.

His lordship's message on this subject.

CHAP. V. from some lately seated at Ann Arundel within his said province
 1651. of Maryland, to his general assembly, held at St. Mary's in March last ; and his unwillingness to impute either to the sender or deliverer thereof so malign a sense of ingratitude and other ill-affections as it may seem to bear ; conceiving rather, that it proceeded from some apprehensions in them at that time, grounded upon some *reports* in those parts of a dissolution or resignation here (in England) of his patent and right to that province ;" and, after affirming that "those rumours and reports were false," and referring them to Mr. *Harrison*, then in England, their former pastor,* for proof of their falsehood, and observing, that "in consideration of a better compliance from those people with his government there for the future, he should not any further expostulate or make any further reflection on that message, till further occasion given him by them, and if such admonition did not prevail, then that he would make use of his authority, with the assistance of well-affected persons, to compel such factious and turbulent spirits to a better compliance with the lawful government there ;" he, accordingly, "wills and requires his lieutenant to proceed with all such as shall be for the future refractory in that kind ; and in case any of the English inhabitants of that province should at any time hereafter refuse or neglect to send burgesses to our general assembly there, being lawfully summoned for that purpose, he wills and requires all the other members of the said assembly, which shall lawfully meet upon such summons, to proceed, as they ought and may lawfully do, in all business belonging to a general assembly there, notwithstanding any such refusal or neglect as aforesaid, and to fine all such refusers or neglectors according to their demerits ;† and

* See ante, p. 370.—Mr. Harrison went from Virginia to Boston in New England. After residing a year or two there, he went to England. Having taken the degree of doctor of divinity in England, he settled at last in Ireland ; but, was most probably at the time of his lordship's letter, then in England. See Hutchinson's Hist. of Massach. vol. i. p. 147. —Holmes's Annals, vol. i. p. 347.

† It seems to be unquestionable, that even at the time of, as well as since, his lordship's letter, as above, by force of the statute of 5 Rich. II. (stat. 2,) ch. 4, members of the house of commons, after *election* and *return* thereof, were finable by the house for their absence ; and this, from the expression in the statute,—“according as of old times hath been used to be done within the said realm in the said case,”—was a principle or rule of the *common law*. But, where no election had been held, and consequently no member elected, as appears to have been the case of the inhabitants of Ann Arundel, the “refusers or neglectors,” alluded to above, must have been either the *commander* of the county or the *sheriff* of such county, to whomsoever of them the *writ of election* had been sent, in not holding an election. If the statute of 23 Hen. 6, ch. 15, was in force here, (as

moreover, in case of their persisting in such refusal or neglect, after admonition thereof by the lieutenant, then that they be declared enemies to the public peace of the province, and rebels to the lawful government thereof, and be proceeded against accordingly.”

Some other occurrences of this year within the province are also to be gleaned from his lordship's message just mentioned. The *reports* complained of and alluded to therein by his lordship, had, it seems, prevailed in Virginia as well as in Maryland. It must be imputed to the prevalence of these reports, that Sir William Berkeley so far entrenched upon the rights of lord Baltimore as to grant a commission, (probably about the commencement of the present year, 1651,) to one Edmond Scarborough, of Accomack in Virginia, to fix a settlement of inhabitants from that colony on Palmer's island, a small island situated at the mouth of the Susquehanah river, unquestionably within his lordship's province. The purport of which settlement appears to have been, to establish a trade with the Indians in those parts; which trade must have been principally with the Susquehanocks, who then occupied the country contiguous to the mouth of that river;* and consequently a trade carried on *in and through* lord Baltimore's province, without any lawful authority derived from him; as he himself states, “a strange usurpation upon his rights!” It does appear extraordinary at this day, how so loyal a governor as Sir William Berkeley was, still holding out against the usurped powers of the mother country, could thus commit so hostile an act towards lord Baltimore. He must have considered his lordship, as having already lost all right to and jurisdiction over

Sir Wil-
liam
Berkeley's
attempt to
fix a settle-
ment on
Palmer's
island.

it probably was,) such commander or sheriff, as the case might be, would seem to have incurred the penalty prescribed in the second section of that statute, on such their refusal or neglect to hold an election and to make a return thereof.

* Although the Susquehanocks appear to have been the most warlike and formidable tribe of Indians within the bounds of Maryland, at the time of its first settlement, yet they must now have considerably decreased in numbers, for, in an anonymous pamphlet written in the year 1648, (an extract from which is published in *Smith's Hist. of New Jersey*, p. 31, and in *Proud's Hist. of Pennsylvania*, vol. i. p. 8,) it is stated, that “of the Susquehanocks there were not then left more than one hundred and ten;” which number, if it included women and children, could not comprehend more than fifty warriors. But the advantageous situation of Palmer's island for a trade with the Indians at that time, by means of the navigation of the Susquehanah, easy to the natives with their light canoes, must have enabled such traders to extend their traffic, not only with all the various tribes then inhabiting Pennsylvania and the upper parts of what is now the state of Delaware, but also as far north as with the Iroquois or Five Nations bordering on lake Ontario and the Niagara.

CHAP. V. his province, and that it was fair to permit his Virginians to participate in this lucrative trade with the Indians. It is probable also, that the old claim of Clayborne to Palmer's island and the right of the Virginians to a free trade "for beavers and other commodities" with the numerous nations of Indians, which the situation of that island admitted and favoured, as may be remembered to have been herein before stated in Clayborne's petition to the late king, in 1638,* now suggested to Sir William, that, if lord Baltimore's rights should be done away, the Virginians might lawfully avail themselves of this advantageous site for Indian traffic. He might possibly also have considered lord Baltimore, in his patronage of the Puritans and reception of them into his province, after they had been driven from Virginia, as decidedly taking part against the loyalists of Virginia, and therefore as not meriting any favour from them, although the Puritans should cast him away from them, as they subsequently did. His lordship, however, after expressing in his letter, his surprise at Sir William's conduct in this respect, authorises and requires his lieutenant, governor Stone, and calls upon his council, the assembly, his officers, and all the inhabitants of the province, to aid and assist therein, that, in case the said Scarborough or any other should presume, upon pretence of any such commission, to settle or trade within his province, without a lawful authority derived from him, to use his best endeavours to hinder them from so doing; to seize upon their persons, boats, and goods, and to proceed against them according to the laws of the province, or in default thereof according to his best discretion, in vindication of his wrongs and in preservation of his rights.

Lord Baltimore's directions for remedying the loss of the records.

It has been before stated, that most of the record books of the province, including such as contained the enrollment of patents of lands, had been, about the year 1644, during the time of Ingle and Clayborne's rebellion, either lost or embezzled, and some inconvenience and injury, both to the proprietary and the patentees, it was apprehended, might thereby arise from such loss; to the lord proprietary in the ascertainment of his rents, and to the patentees in the investigation and proof of their titles to their land, and consequent encouragement of law suits. To prevent these inconveniences and injuries, his lordship also, in the letter just referred to, gave directions to his lieutenant—the governor, to issue out a proclamation, requiring all persons, within a certain time therein to be prescribed, to produce to the

* See *ante*, p. 69.

surveyor general of the province, all such patents from his lordship, by which they respectively claim any land within the province, and that thereupon a true list thereof be delivered unto the governor; and he further instructed the governor to require the secretary of the province to furnish him (the governor) with a list of all such patents of land heretofore granted as were then remaining upon record; whereby, upon comparing the said lists together, the governor might see, what patents were not remaining upon record; and then to require all such persons as claim any land within the province by virtue of any such patents, not now remaining upon record within the province, to cause them to be enrolled in the secretary's office there,* within some convenient time to be limited in the said proclamation for that purpose. Whether such proclamation ever issued, we are not enabled to determine, as no such now appears on record. It must be allowed, that this proposition of his lordship appears to us at this day to have been a very prudent, just, and proper measure, and ought not to have been prevented or opposed even by those who wished to deprive the lord proprietary of all his rights within the province. It is true, that, although a small portion of the lands within the province had at this period of time been taken up, (settlements being as yet formed only within St. Mary's county, the isle of Kent,† and recently at Providence, otherwise called Ann Arundel, on the Severn,) and a lapse of more than a century and a half to the present day must have in some measure remedied all defects of titles to lands taken up prior to 1651; yet to those, who still own lands within the limits of those early settlements within the province, it would still be a desirable circumstance to be enabled to trace their titles to their lands with more clearness and less doubt. This measure of his lordship, therefore, in every point of view, was to be applauded.‡

* The secretary of the province was, at this time, *clerk of the land office* in the province.

† Some information, relative to the population of the isle of Kent at this period of time, (1651,) is to be derived from the anonymous pamphlet before cited, published in 1648, (an extract from which is published in Proud's Hist. of Pennsylvania, vol. 1, p. 116,) wherein the writer makes the following statement: "I hold *Kent isle*, having lately but *twenty men* in it, and the mill and fort pulled down, and in war with all the *Indians* near it, is not worth the keeping." The word "lately," we must suppose, referred to about the year 1647; between which time and 1651, the population could not have much increased;—say, to thirty men; which would not allow a computation of above twenty families on the island in 1651.

‡ Mr. Kilty, who was clerk of the land office in 1808, when he published his book, "The Landholder's Assistant," states therein, (p. 109,) that, "although

CHAP. V. Another circumstance, favourable to the character of lord
 1651. *Cecilius*, is to be derived from this message of his just cited. It
 And for
civilizing
the In-
dians. has been the ambition of philanthropists, even those of the pre-
 sent United States of America, to make every attempt, which
 could plausibly promise success, towards civilizing the Indian
 natives of our country. The propagation of the christian re-
 ligion among them has been repeatedly attempted as the prima-
 ry step towards the accomplishment of so desirable a purpose.
 But reiterated experiments have demonstrated, that this mode of
 civilization is only an idle waste of time and money. They re-
 ject the system with disdain, as being not only incomprehensi-
 ble but irrational to their uneducated minds. Indeed, the reason
 of the thing itself, we might suppose, would at once convince
 every civilized white man, that a system of religion, like that of
 christianity, founded entirely on 'abstract ideas of the purest
 metaphysical nature, and built up by the most refined and subtle
 distinctions, could by any possible process of reasoning be made
 intelligible to any human being, who was accustomed to derive
 all his ideas from the senses merely. And further, were the sav-
 age capable of exercising the mode of acquiring ideas,—de-
 nominated reflection, yet it would be a vain expectation to be
 cherished, that he would thereby be enabled to understand the
 refined distinction between matter and spirit. His ideas of a God
 must be, therefore, purely material and idolatrous. Besides,
 there are certain tenets in the christian religion, which these un-
 tutored children of the forest, in the speeches of some of the
 most intelligent of them, have frequently attacked with some de-
 gree of perplexity to the missionaries and propagandists. The
 doctrine of eternal punishment for a temporary crime;—of the
 necessity of a mediator to obtain forgiveness from an omniscient
 Supreme Being of infinite justice and goodness;—that such
 mediator must be the *son* of God, which presents to them a

the books transferred in 1680 to the land office, then newly erected, are not all
 found or accounted for, yet he had seen no chasms in the present records,"
 (of 1808,) "sufficient to *convince* him, that losses of *records* essentially injurious
 to titles of property in Maryland have occurred."—If the measure, above pre-
 scribed by his lordship, was really carried into execution, it may have been one
 cause, why no such loss, as Mr. Kilty observes, now appears, particularly as to
 grants or patents of lands. The "*abstract* of a book of record now wanting in
 the land office," mentioned in the deposition of Mr. Beddoe, clerk of the land
 office in the year 1786, (as stated in the report of the case of the Proprietary *vs.*
 Jennings, 1 Harris and M'Henry's Reports, p. 185,) may possibly have been in
 part the result of the above proceeding prescribed by his lordship.

gross carnal idea;—and that, let them lead ever such *moral* lives, unless they previously receive a certain indescribable sensation, called the *grace* of God, they can never be saved or enter into the joys of heaven. These opinions appear to their uneducated minds fraught with absurdity. The lord proprietary of Maryland has the credit, on the present occasion, of deviating in some degree from this hacknied mode of commencing civilization with them. The white population of that part of Maryland comprehended in St. Mary's and in part of Charles counties had now increased to that degree as to expel most of the aborigines thereof from their former scites of habitation. These rightful owners of the soil were driven out, and had to fix their homes in the more interior parts of the province. They consisted of the following tribes:—the Mattapanians, the Wicomococons, the Patuxents, the Lamasconsons, the Highahwixons, and the Chapticons: most of whose names point out their former residence, to those who are acquainted with the rivers and places of note, some of which are still known under those denominations, within those two counties.* Lord Baltimore being informed of their distress, and of their willingness to form a settlement by themselves under his protection and government, and “esteeming himself bound,” as he expresses it, “in honour and conscience to allow them, “according to their desire, some place of habitation there, by a title derived from him,” sent directions, in his letter or message before cited, to his lieutenant governor to cause a grant to be made under his great seal to the said Indians “of a certain tract of land in the head of *Wicomoco* river called Chaptico,” containing about eight or ten thousand acres.† He further directed, that the land, so granted, should be erected into a *manor*, to be called by the name of *Calverton manor*; and that a thousand acres thereof should be set apart as the *demesnes* thereof, to be *reserved* for his lordship's own use, as were usual in his grants of other manors. He also thereby appointed his surveyor general—Mr. Robert Clark, to be his steward of the said manor; and in his name to keep court baron and court leet, as occasion should require, in and for the said manor; and on his

*The Wicomoco river dividing St. Mary's and Charles counties, and the Pickawaxen and Chaptico creeks, seem to point out the scites of the residence of some of the above mentioned tribes.

† As the tract of country about the upper parts of Wicomoco river in Charles county appears to abound in swamps and marshes, it is probable, that the Indians themselves selected this situation for their grant, as affording them a greater quantity of game for their support.

CHAP. V. behalf to grant, by copy or copies of court roll, copyhold estates,
 1651. for one, two, or three lives, of any part of the said manor, except the *demesnes* thereof, to any Indian or Indians, that should desire the same, and as he the said steward, with the approbation of the governor, should think fit; provided, that no one copyhold exceed fifty acres, unless it be to the Werowance or chief head of every of the said six nations respectively; and not to any of them above two hundred acres a piece; and that upon every copy so to be granted there be reserved a rent of one shilling sterling, or the value thereof, to be paid yearly to lord Baltimore and his heirs for every fifty acres of land respectively to be granted as aforesaid, and so proportionally for a lesser or a greater quantity of land.

Whatever objections may present themselves in the mind of the reader to any of the subordinate parts of this scheme, particularly as imposing on these wild children of liberty amid their native forests the apparently slavish tenures of the feudal system, yet common candour will induce every philosophic philanthropist to acknowledge, that it is by some such *political* institution, extrinsic of religious creeds and catechisms, that these human beings, now in a state of society next to that of nature, can be reclaimed from the barbarism and ignorance incident to their savage and hunter state. The appointment of lands among them, herein directed by his lordship, was meant, without doubt, to entice them to agricultural employments; which, in all ages and countries, have been obviously the groundwork of civilization. Whether the scheme succeeded or not, (for, these *Indian* copyholders of Calverton manor do not now exist,) detracts nothing from his lordship's benevolent intentions. It must now appear to the eye of every candid reader at this day as a plan of improvement both plausible and practicable; which must have been defeated merely through the influence of those moral and natural causes, principally arising perhaps from their difference of colour, and consequent repugnance to an amalgamation with the whites, which induce savages to shun the practices of civilization and gradually to retire, in a decreasing state, to their beloved haunts and occupations amid the wilderness of the country.

New directions
for settling
the province.

The alteration made by his lordship, in his last conditions of plantation, bearing date, July 2d, 1649, where he enlarged the quantity of lands to be granted to such colonists as should transport themselves and others into the province, making such quan-

tity double to what it was by the preceding conditions of 1648, CHAP. V.
1651. to wit, one hundred acres instead of fifty,* being found inconvenient and probably productive of some injury to the strength of the province, by placing settlements too remote from each other, his lordship thought it proper, by the advice of his lieutenant, to revoke those last instructions and conditions of 1649, in that respect, and, in his message of 1651, to direct that the quantity of land to be granted should be as it was before, only fifty acres for any person of British or *other* descent,† who should be transported into the province from and after the twentieth day of June one thousand six hundred fifty and two. He also, in this message of 1651, confirms his last conditions of plantation, of 1649, in all other respects, “with such alteration of the *oath of fidelity*, therein expressed, as we have formerly agreed unto by our *declaration* dated the sixth of August in the year one thousand six hundred and fifty, and transmitted thither the last year.”‡

His lordship, however, through an anxiety to form settlements on the remote and most disputable parts of his province, by a clause, in his said message or letter, next succeeding that just stated, directs, that the same quantity of land, as that before prescribed by the conditions of 1649, to wit, one hundred acres for each person transported, should be granted to those, who would form settlements on those remote and disputable parts. For this measure he expresses his motive to be,—“for the better publication and remembrance of the *bounds* between Virginia and Maryland, and prevention of any controversies, which may otherwise happen between the inhabitants of Virginia and those of our said province about the said bounds.” He accordingly directs his lieutenant to encourage some *English*, as soon as pos-

* See before, p. 375.

† It is worthy of remark, that the conditions of 1649 seem to confine the grants to be only “to persons of British or *Irish* descent,” although the *commission* annexed to those conditions and bearing the same date, expressly directs the governor to grant lands to any person of *French, Dutch, or Italian* descent in the same manner as to persons of *British or Irish* descent. Hence probably the expression, as above, “other descent.”

‡ It may be inferred from circumstances, that this *declaration*, of August 6th, 1650, contained his lordship’s *assent* only, to the oath of fidelity prescribed by the act of 1650, ch. 29, before cited, and which is the same oath of fidelity above alluded to. I did not find this *declaration* any where on record, and probably it is not now extant in the province. It may be here observed also, that Mr. *Kilty* has overlooked this *alteration* of the instructions and conditions of 1649, contained in this message of his lordship of 1651, and has omitted to state it in that part of his work, (*Landholder’s Assistant*,) where he treats of conditions of plantation, &c.

CHAP. V. sible, to take up such land, as shall be due unto them in the
 1651. province, by virtue of the conditions of plantation or other warrant from his lordship, "near to the *bounds* of his said province, according to the maps thereof, which he sent thither about two years since." This is explained, in the next sentence, to be, "on or near the bounds of the said province on that tract of land, which is commonly called the *eastern shore*, lying between the bay of Chesapeake and the sea; and also on or near the bounds of our said province on that tract of land which lyeth between the creek or river, that runneth by *Patowmack-town*,* called in the map, Patowmack river, on the south, and the river, which runneth by Piscattoway, called in the maps aforesaid by the name of Piscattoway river, on the north, in which last tract is included, as we are informed, that place where Mr. Giles Brent now resides, called by him, Peace, and also the country called there the *Doages*." Subsequent disputes, relative to the division line between Virginia and the eastern shore of Maryland, evidently explain his lordship's meaning here to have related to settlements to be formed in that part of Maryland, of which Somerset and Worcester counties are now composed, bordering on Accomack in Virginia. The country of the *Doages*, (most probably a tribe of Indians so called,) must have been in that part of Charles county in Maryland, formed by the great bend of the Patowmack round what is now called Maryland Point, and extending north, as above mentioned, to the Piscattoway. It may be remarked here, that by the charter of Maryland, lord Baltimore's part of the peninsula, termed the eastern shore of the Chesapeake, was to be divided from the residue thereof, by a right line drawn from Watkins's Point; and, as the true location of Watkins's Point was uncertain, the right line dependent thereon, which formed the bounds of Maryland on that side, became also uncertain, was the subject of subsequent litigation, and finally settled by commissioners appointed for that purpose; but why any doubts should ever have been entertained, as to the *bounds* of Maryland, so low down the Patowmack

*This was an *Indian* town, seated on the Virginia side of the Patowmack, at or near to a place now called New Marlborough, in Stafford county. It seems to be the same Indian-town as that visited by governor Leonard Calvert, when he arrived with the first Maryland colony in 1634, and explored the Patowmack river as high up as Piscattoway, (see before, p. 28,) and the same as that of the *Patowomeks*, so often visited by the Virginians prior to the first settlement of Maryland.

as Charles county, since the river itself formed a natural bounda- CHAP. V.
ry not liable to mistake, is not easily to be accounted for at this 1651.
day, unless it be that the source or "first fountain" of the river,
called for in the charter, was (in 1651,) totally unknown; and
that none of the colonists of either Maryland or Virginia had as
yet explored the Patowmack higher up than the Piscattaway.

From this letter or message of his lordship to those who ad- Mr. Mit-
ministered his government in Maryland, we derive information chell re-
also of a small imposture, (not indeed of much importance, moved
except to illustrate the practices of the times,) to which his lord- from the
ship had subjected himself by his excessive anxiety to increase council.
the population of his province. About the time, or within a
few months after, he had granted the before mentioned commis-
sion to Mr. *Robert Brooke*,* he entered into a negotiation also
with a Mr. William Mitchell; who covenanted with his lordship
and undertook, to transport himself and family to Maryland in
the course of the next succeeding summer, (to wit, of 1650,) and
to convey thither at his own charge so many persons as to
make his family to consist of twenty persons at the least, "divers
of them being artificers, workmen, and other very useful per-
sons;" and in the course of the following summer (of 1651,) to
transport at least ten persons more; for the making, erecting,
and settling a considerable plantation within the province. In
pursuance of this agreement, his lordship gave him a special
warrant, dated 18th of January, 1649, (O. S.) and directed a
grant to be made to him of a manor, consisting of three thousand
acres, on condition that if the said Mitchell did not comply with
his contract, one hundred acres for every person wanting, in the
number contracted for, should be deducted out of the number of
acres to be granted to him.† Soon after, and perhaps before
Mitchell's departure for Maryland, his lordship, by his commis-
sion bearing date the 4th of March, 1649, (O. S.) created him
one of his "council of state within the province."‡ To this he
was induced, as his lordship now expresses it in his letter or
message of 1651, "conceiving, that by his *ability of understand-*
ing, he would have been a good assistance to the lieutenant and
the rest of his lordship's council, for the better conduct of the
government there, and hoping, that, according to his serious

* See before p. 376.

† See this special warrant in one of the land-office books, *Liber*, No. 3, fol. 408, and the substance thereof in *Kilty's Landholder's Assistant*, p. 79.

‡ "Council Proceedings from 1636 to 1657," p. 230.

CHAP. V. professions to him, he would, not only by his advice, but by his
 1651. example of life, have conduced much to the advancement of the province, as well to his lordship's honour as to his own reputation." Mitchell transported himself, and possibly the number of persons for which he contracted; but after his arrival in the province, according to what his lordship says, "contrarily it seems, he not only fomented divisions, but also lived a most scandalous life, whilst he was in the province, with certain *women* whom he carried from England with him, leaving his wife there in a miserable condition, and did likewise, whilst he was in Maryland, most prophanely in publick discourse, profess himself of no religion; all of which was unknown to his lordship," (as he now states, in this his letter or message of August, 1651,) "until of late since the return of Mitchell from Maryland." His lordship, therefore, in this letter formally discharges him from being any longer "of his council of state" in the province, or of being a justice of peace therein, and directs his lieutenant, not to permit him hereafter, if he should return again into the province, to act again in either of those capacities.

The foregoing incident is here mentioned, with a view, not only of illustrating the mode of colonizing the province now adopted and used by the lord proprietary, but also of shewing the progress and effects of Puritanism, which had now taken firm root within the province. His lordship's uncommon anxiety for the morals of the settlers and tenants in his province, must have arisen principally from some apprehensions he was under, of giving to the Puritans, as well in England as in his province, cause or foundation for raising a clamour against his proprietary rights. Cautious to avoid in future any cause for imputations of this nature, he further directs his lieutenant, that "in case any person, who should be of his council of state, or commander of a county, or justice of peace, of his province, should there live scandalously and viciously with any lewd woman, or profess himself of no religion, and shall be legally convicted of either of the said crimes, or shall be twice legally convicted of being an usual drunkard, swearer, or curser, to suspend any such person from being of his council of state, &c., and to appoint some other person in their room, till the causes thereof be certified to his lordship, and his further pleasure be known therein."

Although Mitchell's infidelity to and desertion of his wife

deserved the severest reprehension of every good man, and lord Baltimore acted with propriety in depriving him of all office in his province, yet there is danger in legislating too much or too minutely on these subjects. A too close inspection into the private lives of subjects or citizens of a state, necessary to carry laws against such immoralities into full effect, opens too wide a door to let in the tyranny and oppression of magistrates and administrators of justice. It would be impossible to depict a despot of a religious, civil or political nature, in more glaring colours than in the character of a ruling elder of New England, at this period of time. He acted as a spy in every man's family. Adultery with a married woman had before this, in Massachusetts, been made punishable with *death*, both to the man and the woman committing it.* But, what probably weighed more with lord Baltimore than any other circumstance, in prescribing the before mentioned rigid observance of the moral conduct of his councillors and others in authority in his province, was an ordinance or law, which had been then lately passed by the parliament of England, in May, 1650, entitled, "An act for suppressing incest, adultery, and fornication;" which made these offences punishable with death;† and in July also, in the same year, they had passed another ordinance, entitled, "An act for preventing and suppressing cursing and swearing," imposing a considerable fine for the first offence, and doubling the same upon every repetition of it. At the same session, and about the same time, a bill had been introduced into the house "against painting,

* See an interesting account of the narrow escape of young man and his wife from death by this law, in the year 1663, long after they had been married, for adultery committed by them in her former husband's life.—Hutchinson's Hist. vol. 1, p. 389.

† On the passage of this ordinance in parliament, Henry Martin, a member of the house, declared his opinion,—“that the severity of the punishment, being *death*, would cause those sins to be more cautiously committed, and so being undiscovered, would be more frequent.”—Rapin's Hist. (Tindal's edit.) vol. xi. p. 47. It might, perhaps, have been more justly remarked, that the excessive severity of punishments, disproportionate to the crimes, prevents the execution of the laws. It is fair to add, however, that when Cromwell marched the members of this parliament out of the house at the point of the bayonet, in the year 1653, after calling one a drunkard and a glutton, and another an adulterer, he took this Mr. Henry Martin by the cloak, saying to him—“and thou, master Martin, thou art a where-master.” From whence it may be inferred, if we can believe Cromwell's accusations, that this law had but a feeble effect in checking these vices; most probably on account of its severity; though without doubt, it was highly productive of religious hypocrisy and pretensions, the better to cover their escape from its enormous penalty.

CHAP. V. patches, and other immodest dress of women," but it did not
 1651. pass.* Such being the temper of the times and the principles of those, who now ruled the English realm, there is no wonder, that lord Baltimore should deem it prudent to act in conformity thereto, and not give even his little Puritan colony on the Severn any cause of clamour against him.

We may further collect also from his lordship's letter or message, that not only the members of the last assembly, but those of the council also, had been remiss and negligent in their attendance to their respective duties, when summoned. Their apprehensions of the dissolution of the proprietary government might possibly have produced this effect. His lordship required, therefore, that such absentees should be proceeded against according to the laws, by fine or otherwise, at the discretion of the majority of the council or assembly; and furthermore, that the lieutenant should give his lordship information of such as thus neglect their duties, that he might displace them and put others in their room.

A law
 against
 spreading
 false news
 proposed
 by his lord-
 ship.

The before mentioned reports also, so destructive of all subordination in the province as well as of his lordship's authority therein, induced him now also, to request his lieutenant and council of the province to use their best endeavours upon all occasions for the timely suppression of all such false rumours and reports, and to find out the authors and publishers thereof, and to cause them to be punished according to their demerits; and he also recommended it to the consideration of the general assembly there, whether it be not convenient to make *a law* in the province, as there is in England, for the punishment of all such as should publish *false news* to the disturbance of the minds of the people, and the public peace.†

* Hume's Hist. ch. lx.

† It is laid down by writers of authenticity, that "spreading *false news*, to make discord between the king and nobility, or concerning any great man of the realm, is punishable by *common law*, with fine and imprisonment: which is confirmed by statutes, *Westm.* i. 3 Edw. i. c. 34;—2 Ric. ii. st. i. c. 5, and 12 Ric. ii. c. 11." See 4 *Bl. Com.* 149. If lord Baltimore, as lord proprietary of Maryland, was entitled to *jura regalia*, the *common law*, in this respect, would seem to have been applicable to, and therefore in force within, the province. But, from his lordship's expression above—"a law," he seems to have alluded to some one of the statutes just cited, most probably to that of *Westm.* c. 34; wherein is an expression, which, upon the principle of lord Baltimore's palatinate *regalia*, is peculiarly applicable :—"Tales, whereby discord, or occasion of discord, have many times arisen *between the king and his people*." So reports, whereby discord has arisen between the lord proprietary and his people of the province, would fall

These rumors and reports, however, had too strong a foundation in truth to be done away by such suggestions of his lordship. It will, therefore, be necessary here to revert to some of those important events, which had lately taken place in the mother country, and which soon had their bearing and effect upon the affairs of the province.

CHAP. V.
1651.

It has been herein before stated, that the *Dutch* nation had, from the earliest settlement of this province, as well as in Virginia prior to it, carried on a considerable commerce with the English colonies in America. We have seen herein before also, that Charles the first had, by his instructions to Sir William Berkeley for that purpose, endeavoured to preserve to the mother country that monopoly of the colonial trade, to which it was justly entitled, in remuneration of the expenditures incurred by the protection of those colonies, as well as from the natural principle of colonization.* But, that the colonies of Virginia and Maryland, finding a more ready or convenient market for their tobacco with the *Dutch* than with the merchants of their mother country, especially since the commencement of the unfortunate civil wars, had still persisted in that illicit trade.† This unlawful commerce had also encouraged and enabled these colonies, particularly Barbadoes and Virginia, to venture on a refusal to acknowledge the late changes in the government of England, and to persist in an adhesion to the cause of their sovereign, both the late and present Charles. To punish the “acts of rebellion” of these “robbers and traitors,” as they call them, the parliament made the before mentioned ordinance of October 3d, 1650. But it seems remarkable, that, notwithstanding their resentment and hostility, discernible in this ordinance, against these rebellious colonies, particularly Barbadoes and Virginia, no effectual means were taken, for more than six months, to carry its prohibitions into effect.‡ This is to be accounted for solely upon the suppo-

Proceed-
ings in
England
for the re-
ducement
of the co-
lonies.

within the rule. It may be inferred, however, that lord Baltimore did not suppose this statute to extend to Maryland. As we have now gone through this letter or message of his lordship, herein before frequently referred to, and gleaned from it such historical facts as deserve attention, the reader will find this important document at large in note (LXXIX.) at the end of this volume.

* See before, p. 150.

† See before, p. 218, 363.

‡ *Chalmer's*, (in his *Annals*, p. 123, who is herein followed by *Robertson*,) has without doubt, committed a small mistake in saying, that “in pursuance of the ordinance” of 1650, which he had just then stated, “the ruling powers *instantly* appointed commissioners, and detached Sir George Ayscue, with a powerful fleet, &c., to reduce all their enemies to submission,”—meaning the rebellious colonies.

CHAP. V. sition, that uncertainty was yet deemed by the leaders in parlia-
1651. ment to hang upon the progress of their cause. Their divisions among themselves and consequent perplexity in the management of their affairs might also occasion delay. The arrival of the young king in Scotland, in June, 1650, had occasioned the English parliament to recall Cromwell from his successful progress in the subjugation of Ireland, in order to send him with an army into Scotland to counteract the Presbyterians there in the use they were making of his majesty's presence among them. On Cromwell's marching into that kingdom, the Scots raised an army to oppose him, but by their bad management they suffered him to defeat them at Dunbar; "the Lord," as he said, "having delivered them into his hands." This defeat had a temporary favourable effect upon the situation of the young king in Scotland; who had been, indeed, ever since his arrival there, but in a sort of state imprisonment. The Scots now crowned him, (January 1, 1651, N. S.) and rallied their army under his banners. The king taking advantage of this apparent loyalty, persuaded the leaders of the Scotch army to march with him into England, where he flattered himself, that with such a show of force under him, the English royalists would immediately flock to his standard. The king, with the Scotch army, was in so fortunate a position, that he was enabled to give Cromwell the slip, and was on his march for a day or two before Oliver knew where he was. The Scotch army marched with so much rapidity, that Cromwell could not overtake them, until they had halted for rest at the city of Worcester, in England. Coming up with them here, on the 3d of September, (1651,) he gained his ever memorable battle of Worcester,—his "crowning mercy," as he called it; when he entirely routed the Scotch army, killed many, took a considerable number of prisoners, and obliged the unfortunate king to betake himself to disguise and secrecy in order to effect his escape out of the kingdom.

It is from this victory, that historians date the commencement of Cromwell's uncontrolled power over the English commonwealth. His son-in-law Ireton, and after him Ludlow, had by this time completed the conquest of Ireland; and Monk, whom he had left in Scotland, with a detachment of the English army,

Sir George was not sent out against *Barbadoes* for more than six months after the passage of the ordinance; nor were commissioners appointed for the "reducement" of the colonies on the Chesapeake until September, 1651, near a twelve month after the ordinance.

soon reduced that kingdom to submission. Cromwell, after a few days rest at Worcester, returned in triumph to London on the 21st of September, to commence his dictatorship of the commonwealth. As he had been absent out of the kingdom, at the head of the English armies in Ireland and Scotland, since the middle of the year 1649, much of the business of the parliament had been transacted without his immediate privity. We must therefore impute these negotiations, which had lately taken place between the English commonwealth and the states of Holland, to the parliamentary leaders of the independent party. While these leaders were uncertain of the duration of their power, they were reluctant to come to an open rupture with the Dutch republic ; especially as they were constantly in dread of the influence of the house of Orange, (who were nearly connected by blood with the royal family of England,) to induce the states to join in restoring the king. The prince of Orange's death, which occurred in the latter end of the year 1650, leaving his power and influence to a posthumous son now an infant, presented to the parliament a promising opportunity of forming a strict defensive alliance between the two republics. They accordingly, in the beginning of the present year, 1651, sent two ambassadors, (Oliver St. John and Walter Strickland,) for the purpose of negotiating this alliance. But the states, uncertain as to the progress of the king, (who was then in Scotland, lately crowned there, as just mentioned, and apparently at the head of a loyal army of Scots,) rejected the terms offered to them by these envoys ; being probably also influenced thereto by the party of the house of Orange, who were not yet entirely suppressed. In the discussion of these terms, it seems, the Dutch presented a long list of debts due on account of the depredations of the English upon the trade of Holland. The English ambassador rejected the account, because it chiefly consisted of Dutch vessels taken in an illicit trade with the *revolted English plantation* ;* referring, as may be presumed, to the before mentioned prohibition of all foreign trade with Barbadoes and Virginia, and the colonies therein mentioned, by the parliamentary ordinance of the 3d of October, 1650. These and other difficulties broke off the negotiation, and the English ambassadors returned home in July of the present year, sorely vexed and disgusted with the Dutch ; particularly *St. John*, who had received some personal insults at

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* Mod. Univ. Hist. vol, xxxi. p. 365.

CHAP. V. the Hague by the partizans there of the Stuart family.* He had
 1651. been an eminent lawyer and barrister, was at the time of his embassy chief justice of one of the superior courts of Westminster Hall, and consequently on his return availed himself of his extensive influence with the leaders of the parliament in promoting the subsequent war with the Dutch. It is observed also, by an historian of great authority,† that “Cromwell consented to this war, *of which he saw no necessity*, in pure compliance to *St. John*, and some others, who appeared extremely incensed against Holland.” It may be proper also to add here, that this same historian states, that some of the leaders in parliament were actuated, in the promotion of this war with the Dutch, by a secret motive founded in the hope, that it would tend to diminish Cromwell’s power. The Dutch war would occasion an increased expenditure in the maritime force of the nation; which expenditure would bring about a reduction, if not a disbanding, of the English armies; and thus Cromwell’s projected military despotism would be undermined. Be these causes, however, what they may, it seems certain, that soon after the return of the ambassadors from the Hague, in July of this year, as before mentioned, war with the Dutch was finally resolved on by the parliament. Prior to their return, however, and before the decisive battle of Worcester, some steps had been taken, early in the spring of this year, to check the progress of the Dutch trade; and, for that purpose, a fleet had been prepared during the preceding winter, or fitted out early in the spring, to break up the Dutch trade with Barbadoes, as well as to conquer the isle of

* As these insults to *St. John* are alleged to have had a strong operation in accelerating the English war with the Dutch at this time, curiosity may be gratified in briefly mentioning the circumstances, as they are related in the *Mod. Univ. Hist.* vol. xxxi. p. 364. “The duke of York was, at the time of the arrival of this embassy, at the Hague, where *St. John*, the English envoy, had the presumption in a public walk to dispute the precedence with him; which being observed by the prince palatine,” (Charles Lewis, count palatine, grand-son of James the first, of England,) “his generous mind was fired at the indignity. *He pulled off the envoy’s hat, and bade him respect the son and the brother of his king.* *St. John* put his hand upon his sword, and refused to acknowledge either the king or the duke of York; but the populace taking part with the young prince compelled *St. John* to seek refuge in his lodgings. Complaints were made by the ambassador to the states-general, who advised the duke of York to retire to one of the prince of Orange’s palaces in the country, and expressed their sorrow for the accident on an apology to the English minister.”

† *Rapin’s Hist.* (Tindal’s edit.) vol. xi. p. 58; and in this he seems to correspond with the similar statement of lord Clarendon, in his *Hist.* (fol. edit.) p. 636.

Scilly, which at that time still held out for the king. Sir George Ayscough, who had been appointed to the command of this fleet, having accomplished the reduction of these isles, put into Falmouth for further orders. Some delay occurring to him here, in the receipt of his further orders from London, he did not sail from thence again until about the middle of May, 1651, when, having secret instructions also to cruise upon the coasts of Spain and Portugal for the squadron under prince Rupert, who, as the report thereof prevailed in England, had it in contemplation to cross the Atlantic, and keep possession of all the British American colonies, particularly Barbadoes and Virginia, in his majesty's name and for his use, Sir George did not arrive at Barbadoes until the 16th of October, 1651, where he met with a stouter resistance from the loyal inhabitants of that island, than he had reason to expect.*

In the mean time, a *distinct* expedition was planning in England for the reduction of Virginia. In the month of September, 1651, the *council of state*, acting as the *executive* branch of the commonwealth, took this subject into consideration, and referred it to a committee of themselves, then before appointed, "for the carrying on the affaires of the admiralty."† This committee appointed captain Robert Dennis, Mr. Thomas Stagge, and captain Edmund Curtis, who were then officers in the navy, or inhabitants of Great Britain, together with Mr. Richard Bennett and captain William Clayborne, then residents of Virginia, to be "commissioners for the reducing Virginia, and the inhabitants thereof, to their due obedience to the commonwealth of England." In pursuance of this appointment, the committee proceeded to draw up certain "instructions, for the better directions and proceedings of these commissioners, in the management of that service." In the first draught of these instructions "*Maryland* was at first inserted, to be reduced as well as *Virginia*, but the committee being afterwards satisfied by all the merchants that traded thither, (who were engaged to assist with their ships in the reducement of Virginia,) that Maryland was not in opposition to the parliament; that captaine *Stone*, the lord Baltimore's lieutenant there, was generally knowne to have beene alwayes zealously affected to the parliament, and that divers of the parliament's friends were by the lord Baltimore's especial

Instructions to commissioners for the "reducement" of Virginia.

* Mod. Univ. Hist. vol. xli. p. 140.

† The council of state were a numerous body, consisting of thirty-nine persons. See their names in *Hume's Hist.*, ch. lx.

CHAP. V. directions received into Maryland, and well treated there, when
 1651. they were faine to leave *Virginia* for their good affections to the parliament; then the said committee thought it not fit at all to disturbe that plantation; and, therefore, in the presence of many of the said merchants, and of the two chief commissioners, Denis and Stag, caused *Maryland* to bee struck out of the said instructions; and the council of state did thereupon give license to many ships to trade at that time to *Maryland*, but would not permit any to goe to *Virginia* till that colony were reduced to obedience.* The instructions were accordingly prepared, as we now see them, bearing date, "Whitehall, 26th September, 1651;" without any express directions therein for the reducing of *Maryland*. We shall soon see, however, that the ingenuity of Bennett and Clayborne contrived a construction of them, sufficient to authorise them, in their opinions, to reduce Maryland as well as Virginia.

These instructions, after referring to the before mentioned ordinance of October 3, 1650, "for prohibiting trade with Barbadoes, Virginia," &c., wherein powers were given to the council of state, "for the reducing and governing the said plantations," &c., and stating, that "a fleet was now set forth, victualled, armed, and manned, under the command and conduct of captain Robert Denis, to effect, by the blessing of God, the ends aforesaid," directed the commissioners, that "upon their arrival at Virginia, they, or any two or more of them, (whereof captain Robert Denis to be one,) should use their best endeavours to reduce *all the plantations within the bay of Chesopiaik* to their due obedience to the parliament of the commonwealth of England." Maryland being a "plantation within the bay of Chesopiaik," it was upon this clause, that the commissioners rested the justification of their subsequent conduct in respect to that colony. To effectuate this purpose of reducing these colonies, the commissioners were empowered to use, in the first place, persuasive and lenient measures, as granting pardons, &c.; but, if necessary, "all arts† of hostility, that lie in their power;" par-

* The above quotation is from the pamphlet, before cited, entitled, "A Refutation of Babylon's Fall," &c., by Mr. John Langford; who, being a sensible and intelligent *cotemporary* writer, is to be relied on.

† This expression—"arts of hostility,"—is so in the original, as published in *Hazard's Collections*, (vol. 1, p. 557.) It is possible, however, that in copying, Mr. Hazard, or some one for him, might have mistaken the word *arts* for *acts*. The former word carries with it an *insidious*, and therefore, *odious* sense. After

ticularly the enlistment of servants within the colony into their army, and the discharging and setting free from their masters all such persons so serving as soldiers.* They were also to “cause and use the several acts of parliament against kingship and the house of lords to be received and published ; as also the acts *for abolishing the book of common prayers*, and for subscribing the engagement, and *all other acts herewith delivered you*.”

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It must be acknowledged by all candid persons, that the powers, vested by this clause in the commissioners, carried the authority of an English parliament over the colonies, to a higher tone than was ever attempted before or since by any English or British parliament. Supposing that the parliament had power to alter and change the *form of government* adopted and used by any one of the colonies, and to change such government from a monarchy to a democracy, (of which some doubts might be entertained,) yet assuredly the abolition of the *form of prayer*, in the use of which almost every inhabitant of *Virginia* had been bred up from his infancy, and to which he was perhaps religiously attached, was such a gross violation of every idea of *religious liberty*, that at this day we cannot but view the authors of such a measure as base hypocrites, renouncing those very principles, by which they had artfully worked their way to the tyranny which they now exercised. What those “other acts” of parliament were, which were now also delivered to the commissioners to be enforced, we are no where informed. It is evident, that the parliament claimed a right “to bind the colonies in all cases whatsoever.” Nor did the favourable terms, obtained by Virginia on its subsequent capitulation, so much extolled by one of its historians,† remedy in a great degree this notorious violation of religious liberty ; for, the commissioners graciously condescended therein to permit the use of the book of common prayers for only “one year ensuing.”‡

The three commissioners, in England, Dennis, Stagge, and Curtis, being now furnished with their commission and instruc-
The com-
missioners

lenient and persuasive measures, “acts of hostility,” would naturally follow. But the enlistment of *servants*, being specially directed by them, the word “arts” seems to have been an appropriate term.

* As the word *servants* was here used, it is probable, that it was not intended thereby to include *negro slaves* ; but only *indented* white servants, then serving in the colony according to the usage of that time.

† See Burk’s Hist. of Virginia.

‡ See these “Instructions,” just above stated, at large in note (LXXX.) at the end of this volume.

CHAP. V. tions, must have sailed on their expedition, soon after the date of
 1651. the latter. A small fleet of ships, belonging to the English mer-
 sail on chants of the Virginia trade, "who had engaged to assist with
 their ex- their ships in the reducement of Virginia," as it is stated,* sailed
 pedition. with them. On board of these merchant ships were embarked
 a regiment of seven hundred men, and also, extraordinary as it
 may appear to us at this day, about one hundred and fifty of the
Scotch prisoners, who had been taken at the battle of Worcester,
 about a month before ; and who were transported to be sold as
 servants in Virginia.† It was the common usage of navigators
 in those times, in their voyages from Europe to America, to
 make their route to the southern latitudes, as far as the Azores,
 in order to have the benefit of the trade winds across the Atlan-
 tic. For this purpose, or possibly with a view of reinforcing
 Sir George Ayscue, who was at this time endeavouring to get
 possession of Barbadoes, the fleet under captain Dennis took the
 same route. Sir George had been with his fleet, ever since his
 arrival at Barbadoes on the 16th of October, (1651,) until the
 middle of December following, hovering about the harbours of
 that island, before he could venture to land ; such was the bold
 and spirited resistance of those islanders under lord Willoughby,
 their governor. The Virginia merchant fleet, perhaps directed
 to make Barbadoes their place of rendezvous, fortunately for Sir
 George, arriving about the time last mentioned, he with the as-
 sistance of the regiment and the Scotch prisoners, before men-
 tioned, made good his landing, and took the principal fort of the
 islanders ; who soon after, through lord Willoughby their govern-
 or, made almost as favorable a compromise with Sir George Ays-
 cue, as the Virginians and Sir William Berkeley afterwards did
 with the Virginia commissioners. Whether the two principal
 commissioners for Virginia, captain Dennis and Mr. Stagge, ar-
 rived at Barbadoes, with the merchant fleet just mentioned, is
 not to be determined with certainty. From the omission of any
 mention of either of them, particularly captain Dennis, in the
 histories of Barbadoes, at that critical juncture of the reduction
 of that island by Sir George Ayscue, it may be inferred, that
 they did not get so far on their voyage to Virginia. It is cer-
 tain, that they never arrived at Virginia, in pursuance of their

* Langford's "Refutation of Babylon's Fall," &c.

† Oldmixon's Brit. Emp. in Amer. vol. ii. p. 21, and the *Mod. Univ. Hist.* vol. xli. p. 142.

intended expedition. For the ascertainment of this fact, we are indebted to our respectable *Maryland* author, before quoted. "In this expedition to Virginia," (says he,) "captaine Dennis and captaine Stag, the two chief commissioners, were *cast away* outward bound, in the admiral of that fleet, which was sent from hence" (England) "upon that service, and with whom the original commission for that service was lost. But, captain *Curtes*, having a copy of the said commission and instructions with him in another ship, arrived safe in Virginia, and there being also nominated in the royal commission two other persons *resident in Virginia*, that is, Mr. *Richard Bennet* before mentioned, and captain *Clayborne*, (known and declared enemies of the lord Baltimore,) they, together with captain *Curtes*, proceeded to the reducement of *Virginia*, which was effected accordingly."* Whether captain Curtis touched at Barbadoes, or not, in his voyage, or whether the Virginia merchant fleet, before mentioned, together with the regiment and *Scotch* prisoners on board them, came to Virginia, in conjunction with captain Curtis, or to meet him, we are no were informed. From the circumstance of captain Curtis's not arriving at Virginia until the last of February or first of March following, it may be inferred, that he had designedly delayed in the West Indies, and probably at Barbadoes, during the winter months of December and January, in order to arrive at Virginia, as he did, in the earliest commencement of mild weather in the spring of the year 1652, N. S. What passed at the "reducement" of Virginia, or a detail of the resistance of Sir William Berkeley and the Virginians to captain Curtis's armament, appertains not to our narrative here. It may be allowable, however, to observe, that the extraordinary favorable terms obtained by the Virginians and their governor on this occasion, might possibly be owing to two obvious circumstances attending the transaction, rather than to any great and powerful resistance they were able to make in their defence. The failure of captain Dennis's arrival must have considerably diminished captain Curtis's force; and, as the two other commissioners—Bennet and Clayborne, (without whose co-operation Curtis could do nothing,

Captain
Curtis ar-
rives in
Virginia.
1652.

* *Langford's* "Refutation of Babylon's Fall," &c. Mr. Langford's statement, as above, is confirmed, beyond a doubt, by the want of the signatures of Messrs. Dennis and Stag, the two other commissioners, to the articles of capitulation with Virginia. By their instructions, nothing was to be done without the assent of captain Dennis; but, in case of his mortality or absence, then captain Curtis was to act as chief in command.

CHAP. V. agreeably to their instructions,) were, on his arrival at James
 1652. town, then residents in Virginia, and consequently within the power of Sir William Berkeley and those who supported him in his measures, it ceases to be wonderful, that such extraordinary favorable terms were obtained by them.* Sir William, however, knowing that continued resistance would finally be useless, availed himself of those favorable circumstances, to enter into articles of capitulation and surrender of the colony to the three commissioners, as he did, on the twelfth of March, 1651, O. S.

A circumstance attending this reducement of Virginia, as it regards *Maryland*, ought not to be here omitted. It is stated by our respectable Maryland author, before quoted,† that “captain *Stone*, being then the lord *Baltimore’s* lieutenant of *Maryland*, did actually assist them therein.” This fact throws great light on the religious as well as political disposition of those persons, who now administered the government of Maryland; and, as they probably acted under the direction of lord Baltimore, tends to prove, not only that his lordship had made it his ruling policy, to allow within his province a liberal indulgence to all the different sects of religion then prevalent, but more particularly also, what might be deemed by some, a criminal acquiescence of the Roman Catholics in Maryland, in imitation of those in Ireland, at least as far as his lordship’s influence could operate, in concurring with the Puritans in measures calculated to destroy the

* It must be acknowledged, that this supposition, of Bennett and Clayborne being then actually “residents in Virginia” at the time of the arrival of captain Curtis, seems to be contradicted by an expression in the act of indemnity, granted by the commissioners to the inhabitants of Virginia on their capitulation, to wit,—“We the commissioners, &c. having brought a fleet and force before James city,” &c. But this expression is quite too feeble to contradict a stronger expression in the instructions to the commissioners from the council of state, viz.—“Such of you as are here,” that is, in *England*, “are to repair on board the ship John,” &c. This necessarily demonstrates, that two at least of the five commissioners were not in England at the time of the instructions. The strongest probability is, that they must have been then, at the time of Curtis’s arrival, as well as at the time of the instructions, “residents in Virginia,” as expressly stated by Mr. Langford, a cotemporary author. Two of the three commissioners, who transacted all the business of the capitulation, being themselves *Virginians*, would, therefore, very naturally give themselves the most favorable terms, and most probably by personal stipulation with Sir William Berkeley, prior to the surrender, promised to him all he could reasonably ask, as well for himself as for the colony. The story of the two counsellors, who had goods on board the fleet, mentioned by all the historians of Virginia, might co-operate and assist Bennett and Clayborne in raising a faction against Sir William too powerful for him to oppose.

† Langford’s “Refutation of Babylon’s Fall,” &c.

established religion, and necessarily with it the government, of CHAP. V.
 England. 1652.

But this temporizing policy of captain Stone failed, as it seems, in producing those favorable consequences to Maryland, which he had, without doubt, expected from it. Bennett was too much of a Puritan, not to be anxious to put the government of Maryland on such a basis, that his brethren, whom he had been chiefly instrumental in fixing on the Severn in that province, might have all the influence therein, which they could wish for; and Clayborne most probably fully calculated on a restoration to all his rights and claims on the isle of Kent.

After the surrender of Virginia, these two commissioners, with captain Curtis, proceed to Maryland;* and, as we may presume, to the seat of government at St. Mary's. Arriving here about the last of March, 1652, N. S. and conceiving themselves authorised by their commission and instructions, before mentioned, to reduce "all the plantations within the bay of Chesopiaik" to their obedience to the commonwealth of England, of which Maryland was, without doubt, one, they at first proposed to governor Stone and the council of the province, (as appears from their proclamation of the 29th of March, hereafter stated,) "that they should all remain in their places, conforming themselves to the laws of the commonwealth of England in point of *government* only, "and not infringing the lord Baltimore's just rights."†

The commissioners proceed to Maryland, which submits.

* It has been before stated, on the authority of Mr. Langford, that Mr. Richard Bennett, (whom we have before seen active in procuring preachers from Boston for the Puritans in Virginia,) was one of those, who, being driven out of Virginia, came and settled at Providence on the Severn in Maryland. On the same authority it is stated also, that Mr. Bennett was a resident in Virginia, when he was appointed one of the commissioners, and when captain Curtis arrived there. This seeming contradiction is reconcilable by supposing, that Mr. Bennett's residence at Providence or Ann Arundel was merely temporary, and that as soon as he had seen his brethren fixed on the Severn, he returned to his residence in Virginia. This is corroborated by the circumstance, that although he was a man of the first influence among those settlers at Providence, yet we do not perceive his name in any subsequent document or important proceedings of Maryland from the time of that settlement to the present period of his appearing as one of the commissioners.

† This appears from the proclamation of the commissioners of the 29th of March, 1652, inserted in note (LXXXI.) at the end of this volume. The "just rights of lord Baltimore," here referred to, we may suppose to have been merely his right of receiving his *rents* for lands already granted by him, and possibly also of continuing to exercise the right of granting lands within the province on the condition, heretofore used by him, of paying the customary rents reserved thereon.

CHAP. V. This conformity to the laws of England seems to have been intended principally in two particular respects ; to wit :
 1652.

First. "That all writs, warrants and process whatsoever be issued forth in the name of the keepers of the liberty of England, by authority of parliament."—This was agreeable to the law or ordinance of parliament, made in March, 1649, soon after they had put the king to death, whereby the custody of "the great seal of the parliament of the commonwealth of England," which they had caused to be new made, was committed to a certain number of persons, (three,) who were styled,—*Custodes Libertatis Angliæ, autoritate parliamenti*,—(keepers of the liberty of England, by authority of parliament;) and all writs, process, and proclamations, or public orders, were for the future to be in their name.

Secondly. "That all the inhabitants of the province," (including the governor and council, and other officers of the province,) "should subscribe the test, called the *engagement*." This also was in conformity to an ordinance of parliament, made about the same time as that just before mentioned; whereby a new oath or test was prescribed, instead of the old oath of allegiance, of the same tenor or form, as that now required in Maryland by these commissioners, to wit:—"We, whose names are subscribed, do promise and engage ourselves to be true and faithful to the commonwealth of England, as it is now established, without king or house of lords."

To this second or latter proposition, that is, to take the *engagement*, governor Stone and the rest of lord Baltimore's officers of his government in the province readily assented, and (according to our Maryland author,*) "declared, that they did in all humility submit themselves to the government of the commonwealth of England, in chiefe under God."

In respect to the former proposition, to wit, that all writs, &c., should be issued in the name of the keepers of the liberty of England, and not in the name of the lord proprietary, as they were wont to be:—(to pursue the words of our last cited author,)—"In this, they desired to be excused, because, they did conceive, the parliament intended not to divest the lord Baltimore of his right in his province, and that they understood out of England, that the council of state intended not, that any alteration should be made in Maryland; that the king's name

* Langford's "Refutation," &c.

was never used heretofore in the said writs, but that they had always beene in the name of the lord proprietary, according to the priviledges of his patent, ever since the beginning of that plantation. That the act in England for changing of the formes of writs, declared only, that in such writs and processes, wherein the king's name was formerly used, the keepers of the liberty of England should for the future bee put instead thereof. That the continuing of the writs in the lord proprietary's name was essential to his interest in the province, and therefore they could not, without breach of trust, concur to any such alteration.

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"Whereupon," (according to our author,) "the said commissioners demanded of captain *Stone* the lord Baltimore's commission to him; which he shewed them; and then, without any other cause at all, they detained it, and removed him and his lordship's other officers out of their employment in the province under him, and appointed others to manage the government of Maryland independent of his lordship."

The further reasoning of this author upon this transaction seems to be too forcible and pertinent on the present subject to be here omitted; especially, as his work is now scarcely attainable by common readers, and what he wrote was from a more intimate knowledge of the affairs of Maryland at that time, than almost any other man; he having been, as he states in his pamphlet, "employed by my lord Baltimore in his affairs relating to that province, both heere and there," (in England and in Maryland,) "for above twenty yeares last past."* After the foregoing statement of the proceedings of these commissioners, he observes:—"By which it appears, Mr. *Bennett* and captain *Claybourne* took upon them an authority much contrary to the intention of the councell of state, and indeed contrary to common sense and reason; for, certainly if the councell had had any cause to have altered their mind in that particular, of Maryland, after they had stricke it out of the sayd instructions, they would have caused it to have been put in againe by the same name, whereby their intention might have beene clearly understood; much lesse could they have any intention of reducing

* Mr. John Langford was, by commission dated March 24th, 1641, appointed *surveyor-general* of all the castles, lordships, manors, forests, lands, &c., of his lordship within the province of Maryland "during his natural life;" a tenure of office so uncommon within the province, as bespeaks the confidence which was placed in him by his lordship. He was also a member of the council for several years, as appears by the two commissions for that purpose of 1642 and 1643.

CHAP. V. any place that was not in opposition against them, but in due
 1652. obedience; so as if Maryland had been by any mistake put in by name to be reduced, upon a supposition in the councell that it had been in opposition, yet they could not in reason intend, that in case their commissioners had found, when they came upon the place, (as they did,) that it was not in opposition, that they should reduce it, or prejudice any man's right upon that account. So that whatsoever was done in Maryland by the sayd Mr. Bennett, then governor of Virginia, and the other commissioners, was done without authority."

The commissioners, however, having taken captain Stone's commission from him in the manner stated, (not perhaps in a very fair or honourable way,) they proceeded to publish their orders for the future arrangement of the government of the province, in a proclamation, bearing date the 29th of March, 1652; in which, after referring to their commission and instructions, before stated, and to the propositions before mentioned, made by them to governor Stone and the council, and their denial and refusal of the same, they declared their orders, in substance, as follows:

"That all writs, warrants, and process whatsoever, be issued forth in the name of the keepers of the liberty of England by authority of parliament; and that they be signed under the hand of one or more of the council hereafter named, viz. Robert Brooke, esqr., colonel Francis Yardley, Mr. Job Chandler,* captain Edward Windam, Mr. Richard Preston, and lieutenant Richard Banks.

"That the said council of Maryland, first taking the engagement, do cause the same to be tendered to all the inhabitants in these words:—[as herein before stated.]

"That the said council of Maryland, or any two or more of them, whereof Robert Brooke, esqr., to be one, do govern and direct the affairs thereof;† and hold courts as often as they think

* Mr. Brooke and Mr. Chandler had been members of the council before, under lord Baltimore. The former by commission bearing date, September 20th, 1649, before stated, and the latter by one dated August 1st, 1651; by which last commission Mr. Chandler was also made his lordship's "receiver-general." These appointments of Mr. Chandler appear from the preamble to his commission, to have been made by lord Baltimore himself, through the special recommendation of governor Stone, and the friendship, therein professed by his lordship, for Mr. Richard Chandler, of London, merchant, brother to Mr. Job Chandler.

† From this it would appear, that Mr. Brooke was to act as governor, or president of the council, in the room of governor Stone.

fit for that purpose; as also, that they summon an assembly to begin on the 24th of June next coming, the burgesses whereof are only to be chosen by such freemen as have taken the said *engagement*; and that neither by the said council, nor in the said assembly, any thing be acted contrary to the laws of England there established, or to their obedience due to the commonwealth of England.

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“That the commissions for the governor and council,” (that is, lord Baltimore’s commissions to governor Stone and his council,) “be hereby declared void and null, and to be delivered into the hands of us the commissioners; as also that all records, and other matters and things relating to the government of Maryland, be delivered into the hands of the council herein by us nominated.*”

Thus was the province of Maryland completely reduced to an obedience to the parliament of the commonwealth of England, and all authority and power of the lord Baltimore within the colony, which he had planted at so much cost and reared with so much care, entirely taken out of his hands, with the probable prospect, that it would never again be restored to him.

* See this proclamation of the commissioners at large, in note (LXXXI.) at the end of this volume.

CHAPTER VI.

The state of the province after the "reducement"—The commissioners return to Virginia—The commissioners return to Maryland again—The government re-instated by them in captain Stone—Clayborne's claim to the isle of Kent—A treaty with the Susquehanock Indians—Complaints against Captain Vaughan, as commander of the isle of Kent—Hostilities of the Eastern Shore Indians—Grants of lands from lord Baltimore neglected in Anne Arundel and the isle of Kent—A scarcity of corn—Origin of the famous navigation act—Hostilities apprehended from the Western Shore Indians—Affairs of England in relation to Maryland—Proceedings of governor Stone relative to patents for lands and issuing of writs—The early contests about the lands on the Delaware—State of the Roman Catholic religion at this time in Maryland—Cromwell proclaimed in Maryland as lord protector—Calvert county first erected—Governor Stone revolts, and the province is again "reduced"—The government vested in captain Fuller and a council—An assembly called, which meets—Their proceedings—Governor Stone re-assumes his office and powers as governor—organizes a military force—And marches towards the Severn—The battle on the Severn—The estates of the *delinquents*, (governor Stone's party,) sequestered—Proceedings in England relative to these provincial disputes—Fendall appointed governor—He is arrested and imprisoned by the Puritans—The government of England favourable to lord Baltimore—The agents, Bennett and Matthews, persevere in their opposition to his lordship—Lord Baltimore's instructions to his governor—Lord Baltimore sends his *brother* Philip Calvert to Maryland—Mr. Barber appointed deputy governor in the absence of governor Fendall—Fendall goes to England—The divided state of the province—Another Puritan assembly is called, and meets—The agreement between lord Baltimore and the agents, Bennett and Matthews—Lord Baltimore's instructions to his governor for the time being—Governor Fendall returns to Maryland—Negotiations between the proprietary and Puritan governors for a surrender of the province to the former—The final agreement and surrender in consequence thereof.

<p>CHAPT. VI. 1652. The state of the pro- vince after the "re- duce- ment."</p>	<p>The affairs of the province, immediately succeeding the "reducement" thereof, appear to have remained for several months in considerable uncertainty. Governor Stone and Mr. Hatton, the secretary, in consequence of their rejection of the terms proffered to them by the commissioners seem to have been considered for some short time only as private citizens. Hr. Hatton, however, appears to have found some favour with the new council; for, on his request to them for that purpose, they made an order of council, dated the 22d of April, 1652, that any inhabitant of the province, whom Mr. Hatton himself might appoint, should be authorised to collect, or "levy by execution in the usual manner, all or any such fees as were due to him." This</p>
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order was expressed to be, "in the name of the keepers of the liberties of England by authority of parliament," and signed by "Robert Brooke" and "Richard Banks," two of the council appointed by the commissioners, as before mentioned. There appears, from a subsequent document, to have been a family connection between Mr. Banks and Mr. Hatton, which possibly might account for this special favour, though common justice would have been a sufficient basis for it.

The commissioners must have returned to Virginia, soon after they had completed the "reducement" of Maryland, on the 29th of March as aforesaid, or at least by the latter part of April; for, on the 30th of that month, we find them there, engaged with the *burgesses* of Virginia, in organizing a new government for that province. The tenor of the important act for this purpose was thus:—

"James city, April 30th, 1652.—At the *general assembly*.—After long and serious debate and advice for the settling of the government of Virginia, it was unanimously voted and concluded, *by the commissioners* appointed by the authority of parliament, and by all the *burgesses* of the several counties and places respectively, *until the further pleasure of the states be known*,* that Mr. Richard Bennett, esq., be governor for the ensuing year, or until the next meeting of the assembly, with all the just powers and authorities that may belong to the place lawfully. And likewise that colonel William Clayborne be secretary of state, with all belonging to that office,† and is to be next in place to the governor; next, that of the council of state be as follows:—[naming them in particular,] "and they shall have power to execute and do equal justice to all the people and inhabitants of this colony *according to such instruction as they have or shall receive from the parliament of England*, and according to the known law of England, and the acts of assembly here established." A further clause provided, that the said governor, secretary, and council should also have such additional powers and authorities, as the grand assembly should from time to time grant to them.‡

* This must mean—"the pleasure" of the commonwealth of England.

† These expressions, relative to the offices of governor and secretary, must have vested in these officers all the powers of any former governor or secretary within that province.

‡ See this important State Paper at large in *Burk's History of Virginia*, vol. 2, p. 93.

CHAPT. VI. 1652. As Mr. Bennett and Mr. Clayborne were now to act in a most authoritative manner over the province of Maryland, it was deemed proper to state, as above, the extraordinary powers assumed by them or vested in them by the assembly of Virginia over that neighbouring colony also. Clothed with these ample powers in the parent colony, it was not for the weaker daughter to exhibit any symptoms of resistance to them or their mandates. We shall see them, accordingly, ruling with unresisted sway over both these two little distant portions of the British dominions. It is not to be supposed, considering the political sentiments of the people of Virginia but a few months before, that Mr. Bennett could have been elected governor of that province by a free and unbiassed election; and it was absolutely necessary, that his fellow labourer Clayborne, should also be provided for "next in place to the governor." It is probable also, that such councillors were nominated, whose political as well as religious opinions approximated to Puritanism, as nearly as could be selected. But, notwithstanding the boasted independence and the apparent security of the rights and privileges of Virginians, acquired by the terms of the preceding surrender and capitulation, on the 12th of March, we here find in this last proceeding of the burgesses, on the 30th of April, a tame surrender of all those rights and privileges to two creatures of the English commonwealth, who were in all things to act, "according to such instructions, as they should receive from *the parliament of England*."

Commissioners return to Maryland again.

Mr. Bennett and Mr. Clayborne, having thus provided for themselves honourable, and perhaps profitable, stations in Virginia, returned to Maryland again, about the latter end of June, to make a more satisfactory settlement of the government of that province also. It is remarkable, that both the governors of Maryland, as well as of Virginia, when these commissioners took those provinces out of their hands, had acquired, by their highly correct conduct in their offices, as we may presume, extraordinary popular favour with the inhabitants of each of their provinces. It was so much so with Mr. Stone, that, according to the statement of the commissioners themselves, in the order for the settlement of the government of Maryland, which they were now about to make, it was the manifest "desire of the inhabitants, that captain Stone should reassume his former place of governor." As the settlement of the government, on the

29th of March, as before stated, was a temporary measure only, the commissioners felt themselves at liberty to re-organize the government of Maryland according to those expressed wishes of the inhabitants. It would seem, that a kind of excuse, or *salvo jure*, was invented, in order to justify captain Stone in his alteration of mind respecting his acceptance of the office of governor upon the same terms as first proposed to him; that is, as the commissioners state it, in their proclamation for that purpose, on the 28th of June, that he, and Mr. Hatton as secretary, were left out of office, on the settlement of the government on the 29th of March last, "upon some misapprehension or misunderstanding, as they" (captain Stone and Mr. Hatton) "allege, in that particular of issuing out writs and all other process whatsoever, in the name of the keepers of the liberties of England by authority of parliament;" and that captain Stone was "content to reassume his former place," &c. on condition, that he might "reserve and save to himself, as also to the aforesaid Mr. Thomas Hatton, Robert Brooke, esqr., and captain John Price, their oaths made to the lord Baltimore, lord proprietor of this province, until the pleasure of the state of England be further known." If the reasoning assigned by governor Stone, when he first rejected the proposals of the commissioners, on the 29th of March, was well founded, to wit, that they could not change the style of the writs, &c., without an infringement of lord Baltimore's proprietary rights, which would be a violation of their oaths of office, it is difficult to conceive, how they could now agree to such alteration of the style of writs and the process, and still *reserve* and *save* to themselves their oaths to the lord proprietor, even though it should be temporary, until the pleasure of the state of England could be known. From subsequent circumstances it may be conjectured, that captain Stone, upon more mature reflection, thought it best for the lord proprietary's interest, and perhaps for his own, to temporise a little with the commissioners, and to reassume his office of governor on the terms proposed. Accordingly, two of the commissioners, Richard Bennett and William Clayborne,* with the advice and consent of the council and others the inhabitants," as they state, issued their order or proclamation, bearing date the 28th of June, 1652, "that captain Stone, esqr., be the governor, and

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1652.

The government
reinstated
by them in
captain
Stone, &c.

* Captain Curtis, being a sea faring man, must have sailed from America by this time; for we do not see his name affixed to any further document on our records.

CHAPT. Mr. Thomas Hatton, Robert Brooke, esqr., captain John Price,
IV. Mr. Job Chandler, colonel Francis Yardley, and Mr. Richard

1652.

Preston, be the council for this province, who are to govern, order, and direct the affairs thereof in all matters according to their former power, and the order or proclamation aforesaid." Thus, two of the gentlemen of the former council, created on the 29th of March last, were now left out, to wit, captain Edward Windham, and lieutenant Richard Banks, and Mr. Thomas Hatton, (who was also secretary of the province,) and captain John Price, put in their places. For this alteration our documents furnish no assigned cause. The rule of conduct prescribed to the governor and council, by the last expression in the above clause of the order, to wit, "according to the former power, and the order aforesaid," must have meant, that the governor and council were to act in all things according to their former commissions from the lord proprietary, except perhaps, that instead of the oath of allegiance to the king, the *engagement* was to be taken, and that (agreeably to the present order) all writs, process, &c., should for the future issue in the name of the keepers of the liberty of England, and not in that of lord Baltimore as heretofore. The commissioners conclude their proclamation with a supplementary order, very much to the credit of governor Stone:—"And since the government is so settled, as is known to be, *to the good liking of the inhabitants*, it is conceived, for that and several other reasons, that there is no absolute necessity of a general assembly at present." It will be recollected, that, by the order or proclamation of the commissioners, of the 29th of March last, the council, thereby erected, were "to summon an assembly to begin on the 24th of June next coming." No evidence appears, from either the records or otherwise, that such assembly ever met or were summoned. What those "other reasons" were, besides the popular restoration of governor Stone, referred to by the commissioners, for the prorogation of the assembly, we are no where informed. Perhaps one of them might be, that the colony was considered to be in too perturbed a state for the deliberations of a legislative body.*

After so much disturbance in Maryland, as had heretofore taken place in relation to captain Clayborne's claim to the isle

* See this last mentioned order or proclamation, of the 28th of June, 1652, at large, in note (LXXXII.) at the end of this volume.

of Kent, it would naturally be inquired, what his conduct and proceedings were, relative thereto, now when he had arrived to be one of the sovereigns of the province? But, in this respect, our documents seem to disappoint us in the desired information. In a treaty with the Susquehannock Indians, which will be presently exhibited, it is expressly stated, that the isle of Kent and Palmer's island belonged to captain Clayborne; and no other recognition of his ownership thereof occurs to our search. It will be presently seen, however, that immediately succeeding to this last settlement of the government of Maryland, on the 28th of June, that the government or civil authority within the isle of Kent was subordinate and amenable to that of the province at St. Mary's, the provincial seat of government. Hence, it is to be inferred, that the only change on the present occasion experienced by the inhabitants of the isle of Kent, different from the rest of the province, was, that they were to pay their quit rents to captain Clayborne instead of lord Baltimore, and that he should for the future have the right of granting lands therein instead of his lordship, (though of this we have no evidence,) but that in all other respects, they were to be subject and amenable to the provincial government, as now settled and established under the commonwealth of England. As Mr. Bennett and Mr. Clayborne seem to have left the government of the province, after it had been thus organized, entirely under the management of governor Stone and the council, and Mr. Clayborne's name does not appear shortly again in any matters whatever relative to the government of the province, until the year 1654, we may suppose, that he returned soon after this last settlement of the government of Maryland to the duties of his office of secretary of state in Virginia. We find Mr. Bennett, however, immediately afterwards, and, as it would seem, before his return to Virginia, engaged in two important public transactions of the province, appointed thereto, with others of his Puritan brethren on the Severn, by governor Stone and the council, who had just entered on the duties of their offices.

“At a *court* held at Saint Mary's, the 28th day of June, *anno domini*, 1652, being the first sitting of the court after the alteration of the government, *the same day*—Present, William Stone, esqr., governor, Mr. Thomas Hatton, secretary, Robert Brooke, esqr., col. Francis Yardley, Mr. Job Chandler, Mr. Richard Preston.”

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From this caption of the record and the date thereof, it will be seen that governor Stone and the council, just appointed, must have entered on the duties of their offices immediately after the preceding organization. It may be here remarked also, that in perusing the early part of the provincial records, it frequently occurs, that the political state transactions of the province are recorded as the proceedings of a court of justice instead of those of the executive branch of the government. This resulted from an imperfection in the government, in placing the duties of the *executive* and *judiciary* branches in the same body of men. The supreme provincial court of law and equity was composed, by virtue of all his lordship's commissions hitherto sent, of the governor and council for the time being, who frequently on one and the same day, without rising, acted in their *judicial* as well as *executive* capacities; and hence the erroneous blending of their powers, by the recording clerk, is easily accounted for. This will appear from the nature of the two transactions of the governor and council at this time, thus stated as done at the holding of a *court*.

A treaty
with the
Susque-
hanock
Indians.

“Whereas this court is informed, that the Susquehanna Indians have a long time desired and much pressed for the conclusion of a peace with the government and inhabitants of this province, which, as is now conceived, may tend very much to the safety and advantage of the inhabitants here, if advisedly effected: It is, therefore, ordered, and the court doth hereby give full power and authority unto Richard Bennett, esqr., Mr. Edward Lloyd, captain William Fuller, Mr. Thomas Marsh, and Mr. Leonard Strong, or any three or more of them, whereof the said Richard Bennett, esqr., to be one, at such time and place as they shall think convenient, to consult and treat with the said Susquehanna Indians, and by the use of all lawful and fitting means, (if they can,) to conclude a league and peace, on the behalf of this government and the inhabitants thereof, with the said Susquehanna Indians, so as the peace, safety, and advantage of the inhabitants here may be, (so far as in them lies,) thereby advanced, settled, and preserved.”

The above named gentlemen, except Richard Bennett, esqr., who must have been now considered as a resident of Virginia, being governor thereof, and here only in his capacity of commissioner, were all inhabitants of the new Puritan settlement on the Severn, recently called Ann Arundel, formerly and soon

again called Providence. They must have immediately, or with-
 in a day or two after the preceding authority was given to them,
 entered upon the execution of their diplomatic duties; for, on
 the fifth of July next following, a treaty was held, and articles
 agreed upon by them, with the Susquehanocks, "at the river
 of Severn in the province of Maryland;" to which place Mr.
 Bennett had most probably gone, not only for the special pur-
 pose to which he was delegated by the present provincial go-
 vernment, but also to pay his friendly visit to his Puritan breth-
 ren, whom he had planted there with so much care.

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The first article of this treaty, containing matter of great in-
 terest and curiosity even at this day, deserves particular animad-
 version :

"First, that the English nation shall have, hould, and enjoy,
 to them their heires and assigns for ever, all the land, lying from
 Patuxent river unto Palmer's island on the westerne side of the
 baye of Chesepiake, and from Choptank river to the northeast
 branch which lyes to the northward of Elke river on the east-
 erne side of the said baye, with all the islands, rivers, creeks,
 —*— fish, fowle, deer, elke, and whatsoever else to the same
 belonging; excepting the isle of Kent and Palmer's island,
 which belong to captain Clayborne. But nevertheless, it shall
 be lawful for the aforesaid English or Indians to build a house
 or fort for trade or any such like use or occasion at any tyme
 upon Palmer's island."

The limits assigned, by this treaty of cession from the Sus-
 quehanocks, to the southern part of the *western* shore of the
 bay, being probably as far southward as they claimed, to wit,
 from *Patuxent* river, is some corroboration of what has been
 herein before stated; that the dominions, over which the empe-
 ror Powhatan of Virginia reigned, extended from James river to
 the Patuxent. It will be recollected, that when the Maryland
 colonists first settled in St. Mary's, in the year 1634, the Sus-
 quehanocks were said to be then waging a cruel war upon the
 Indians of that peninsula between the Patowmack and the Pa-
 tuxent, particularly on the Yoamacoës. Powhatan, on account
 of the distance of this part of his territories from his seat of go-
 vernment was probably unable to protect them. The arrival
 and settlement of the Maryland colonists on that peninsula was
 highly agreeable to the Indians there, as it seemed to promise to

*There is a blank here in the record.

CHAPT. VI.
1652. afford to them, as it actually did, considerable protection from the incursions of the Susquehanocks. But although the extent of this cession from south to north on the western coast or shore of the bay is ascertained with sufficient precision, yet its western limits towards the Allegany mountains seem to be quite indefinite, nor is there, probably, any evidence, to be obtained at this day, of the extent of the territories claimed or possessed by the Susquehanocks towards the more western parts of Maryland. The extent of the cession on the eastern shore, to wit, from the Choptank to the north east river in Cecil county, seems to imply, that the Susquehanocks had by this time subdued all the intermediate tribes on the eastern shore between the north east river and the Choptank, or that these tribes between the north east and Choptank, had incorporated themselves with the Susquehanocks. At the time of the first exploration of the Chesapeake by captain Smith, in the year 1608, the Susquehanocks and the Tockwoks, appear to have been in illiance with each other for the purpose of resisting the Massawomecks or Five Nations, who had come down the Susquehanah to attack them. How the Susquehanocks came to a right to cede the territory formerly owned by those intermediate tribes, is not easily to be ascertained. This right was most probably acquired either by conquest or incorporation; by the former most probably, if the conjecture be well founded, that the Indians settled on the south shore of the Choptank, called in the act of assembly of 1669, "the Choptank Indians," were a remnant of some one of these intermediate tribes, who had been driven there by the Susquehanocks, some time previous to this treaty of cession of 1652.

It will occur also, by an inspection of the maps of Maryland, that a small portion of territory, lying between the before mentioned north east river in Cecil county and the Susquehanah river, was by this treaty reserved by the Susquehanocks. For what purpose, except that of more conveniently carrying on their traffic in peltry brought down the Susquehanah by them, does not appear. The reservation, which they made in the treaty, of a right "to build a house or fort for trade" on Palmer's island, seems to strengthen this supposition; and from this reservation also it may be inferred, that few or no inhabitants had as yet ever permanently seated themselves on Palmer's island, whether it belonged to lord Baltimore or Mr. Clayborne; and that Sir

William Berkeley had never carried his intentions into execution of fixing settlements on that island for traffic as before mentioned. In regard to the isle of Kent, although the exception of that island in this treaty of cession is sufficient proof, that Mr. Clayborne claimed that island, and that although he does not appear to have been engaged in the treaty, and was perhaps in Virginia at the time, yet his friend Mr. Bennett had been sufficiently mindful of his interests.

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1652.

The remaining articles of the treaty seem to have been calculated principally for the future preservation of peace, and for the prevention of any rupture between the contracting parties; and it was provided, that in case of a rupture, "twenty days warning thereof, and delivering up of this writing," should be given beforehand.*

The other important transactions referred by the provincial court, "held at St. Mary's on the 28th of June," as before mentioned, to the same gentlemen before named, who had been appointed to negotiate the treaty with the Susquehannocks, related to certain complaints, which had been made by the inhabitants of the isle of Kent and others against captain Robert Vaughan, commander of the said island, "for divers misdemeanors and abuses in the execution of his office and otherwise." What these misdemeanors and abuses were, the order does not specify; but proceeds to state, that "no course having been hitherto taken in the due examination thereof, for the satisfaction of the said inhabitants, who have several times attended this court for that purpose to their great charge and trouble,† and the said captain Vaughan not now appearing according to expectation; It is therefore, by the governor of this province, with the advice of the council, for avoiding of further charges and trouble to the said inhabitants in attending this court again at so great a distance upon this occasion, thought fit and so ordered, "that the matter complained of be referred to the hearing, examination,

Com-
plaints
against
captain
Vaughan,
as com-
mander of
the isle of
Kent.

* See this treaty at large in note (LXXXIII.) at the end of this volume.

† From this it would appear, that these "misdemeanors and abuses" had been of long standing. Mr. Vaughan had been commander of the isle of Kent ever since his appointment by commission of the 18th of April, 1647, confirmed by another commission, by lord Baltimore himself, of the 12th of August, 1648. On a quarrel between him and governor Greene in November of the same year last mentioned, he had been removed by the latter, but in a month afterwards, on the 11th of December, was restored by governor Greene on his humble submission for his offence, as has been herein before stated.

CHAPT. VI. and determination of the persons before named,* or any three or
 1651. more of them, whereof the said Richard Bennett, esqr., to be one, who are hereby desired and authorized at such time and place, as they shall think fit for that purpose, to call the said captain Robert Vaughan before them, and if, upon the hearing and examination of the matter, they shall see cause for it, to remove him from his said place of commander of the said island, as also to appoint and constitute the said Mr. Thomas Marsh,† or some other fitting and able person, to the said place or office of commander of the said island, who is hereby in that case by the said governor, with the advice aforesaid, as fully authorized for that purpose as any other commander of any other county within this province, till further order to be taken herein.”‡

Whether Mr. Bennett and the other commissioners, hereby appointed, ever proceeded to any hearing or examination of these complaints against captain Vaughan, it does not appear. It seems from a subsequent document of the 18th of December next following, that captain Vaughan was then still commander of the isle of Kent; from which the most probable inference is, that no inquiry into his conduct by these commissioners ever took place.

Hostilities
of the east-
ern shore
Indians.

Although the preceding treaty of cession of the greater portion of the eastern shore of the province from the Susquehannocks might have been supposed to have guaranteed a peaceable and quiet possession thereof, especially to the white inhabitants of the isle of Kent, the only part of the eastern shore where any attempts at settlements as yet appear to have been made, yet the records of the province exhibit for this year most lamentable accounts of the murders, house-burnings, and robberies committed by the Indians upon the inhabitants of that island; and some of these injuries must have been done subsequent to the before mentioned treaty. There seems to be grounds, for conjecture, however, that these depredations upon the inhabitants of the isle of Kent were committed by the *Nanticoke* Indians, joined per-

* Meaning the commissioners “before named,” who had been appointed to treat with the Susquehannocks.

† A gentleman of the name of Thomas Marsh, who died about the middle of the eighteenth century, owned a large landed estate on the isle of Kent nearly opposite to the mouth of the Severn. He was probably a descendant of the above Mr. Thomas Marsh.

‡ These proceedings of the provincial court, of the 28th of June, 1652, were taken from the book entitled “Council Proceedings from 1636 to 1657,” p. 256.

haps with those of Wicomoco in Somerset. By the treaty just mentioned, the Susquehanocks limited their cession on the eastern shore southward by the Choptank; thus leaving the territories of the Nanticokes and the Wighcomocoës, in the present counties of Dorchester and Somerset, unaffected by their grant. But the Nanticokes were at this time full as powerful as the Susquehanocks, having sustained less diminution by fewer wars, and would not hold themselves bound by any treaty of peace or cession made by the latter. It is possible also, that the other Indians of the eastern shore, that is, those tribes dwelling within the limits of the territory ceded, to wit, from the northeast branch at the head of the bay to the Choptank, comprising the Tockwocks, Osinies, and perhaps those Indians subsequently denominated "the Choptank Indians," were discontented at this cession of their country, and had received unusual excitement therefrom. Be this as it may, the inhabitants of the isle of Kent deputed Mr. Philip Conner, Mr. Thomas Ringgold, Mr. Henry Morgan, and Mr. John Philips, to go to St. Mary's, with a petition to the governor and council,* setting forth, "that, whereas formerly there had been by the eastern shore Indians one murdered, and now of late one shot, another killed and stript near to his own house, all of them inhabitants of this island and *subjects of this province*, a dwelling house and much goods burned, as is conceived, by Indians, to say nothing of the continual trade of killing of hogs, they are so emboldened, these murders being past by, and being so well furnished with gun-powder and shot, that they come about our houses night and day, so that larums and disturbances are occasioned weekly, nay daily, so that some are so dreaded and affrighted, they have left their plantations, and many are resolved to desert the island."† "We are also informed, that the eastern shore Indians have great store of powder and shot, and many guns, not only in what they formerly bought, and have taken in captain Gugen's wreck, but they have not long since taken a Dutch sloop with guns, besides very much powder and shot, so that they are

* From this circumstance it is to be inferred, that the isle of Kent, notwithstanding Mr. Clayborne's claim thereto, still remained "subject" to the provincial government at St. Mary's.

† If there were but *twenty men* in the island in the year 1648, and the *fort* then pulled down, as has been before stated from a cotemporary writer of that year, (see before, p. 419,) it is probable, that they were not much stronger in the present year 1652; and consequently but illy able to resist the Indians.

CHAPT. VI. very strong, bold, and insolent;*—the premises considered, the
 1652. petitioners humbly crave, that his worship and the council would be pleased to seriously weigh and consider their deplorable condition, and take some speedy course for the suppressing of those heathens, and avenging of guiltless blood, and the preservation of their lives, with their wives and children."

In consequence of this petition, as it would appear, governor Stone and the council convened and met, as the record expresses it, "at a court held at Saint Mary's, 25th day of November, 1652." After a statement of the substance of the petition, the record proceeds: "The governor and council, now present in court, together with Thomas Cornwaleys, esqr.,† and others, whose advice and assistance was desired in this case of great concernment, have ordered and appointed, that sufficient forces be speedily raised for a march against the eastern shore Indians, and for that purpose every seventh man throughout the province is to be *pressed* for this service; councillors, commissioners,‡ and other officers and persons of public employments within this province, and others usually freed in cases of this nature, excepted;§ and that the sheriff or other to be appointed in every

* If this Dutch vessel taken by the Indians, as above mentioned, was captured by them in the Delaware bay, as it possibly might be, the Dutch having at this time settlements on the Delaware, it would indicate, that all the Indians of the peninsula might have been engaged in an alliance to drive away all Europeans, where it was probably in their power to do it. As the Dutch, however, still carried on a trade with the two colonies on the Chesapeake, (Virginia and Maryland,) at least to the time of the "reducement" of those colonies in the spring of this year, it is more probable, that it was some Dutch vessel captured by them in the Chesapeake.

† The reader cannot but have much pleasure in greeting again our old colonial friend and acquaintance—the *captain*, as he was always called. It will be recollected, that captain Cornwaleys came to Maryland with the first settlers in 1643, as one of the *assistants* or councillors to governor Leonard Calvert, appointed thereto by lord Baltimore. For several years after the first settlement of the colony, he seems to have been relied upon as the governor's Mentor in council and Achilles in combat. In the year 1643, he was called upon to command the little army to be raised to repel the incursions of the Susquehannocks, as before stated, (p. 257.) His name does not often hereafter occur. He seems to have lived retired on his estate in St. Mary's county, called at this day Cornwaley's Neck. We shall see him, however, again called forth by lord Baltimore himself, on a very important occasion in 1657, for his advice and assistance.

‡ Meaning justices of the peace.

§ On this subject of exemptions from militia duty, see before p. 242, and 252-3. As to *pressing* men, &c., there was an act, passed at the September session of 1642, entitled, "an act providing some things for the better safety of the colony," which authorized the lieutenant general, "to press or take any vessels, men, provisions, arms, &c., at the most usual rate of the country, when necessary for defence,"—see before, p. 245.

county by the governor, or commander, or commissioners of such county for this employment, is, so near as he can, to press the ablest and fittest men amongst every seven for this service, together with such a convenient number of boats and other vessels for transportation, well fitted, as the governor shall conceive fitting and necessary to be used upon this expedition ; and it is further ordered, that every the six persons throughout the province are to furnish out the seventh man, so pressed as aforesaid, with sufficient and fitting provisions of victuals from the time of his setting forth upon this expedition until the time of his meeting at the general rendezvous at Kent hereafter mentioned, and for twenty days after, with one gun well fixed, one pound and a half of powder, and six pounds of shot, and all other fitting and necessary provisions, arms, and ammunition for this service ; from which charge no inhabitant of this province, councillor, or others, not pressed as aforesaid, is to be exempted ; and it is further ordered, that all and every the forces so to be raised as aforesaid in Saint Mary's county, Charles county, and Patuxent river on the north side thereof,* shall meet together at Mattapanian upon the said Patuxent river,† near to the house late of Thomas Wair there, upon the twentieth day of December next, together with such boats, or other vessels as shall be pressed, or otherwise provided, for the transportation as aforesaid ; where the governor is desired to appoint some able person or commander to take a view of them, as also how they are accommodated in every particular for the service, and under whose conduct and command they may with all convenient speed be transported unto the isle of Kent to the general rendezvous there upon the 30th day of the said month of December ; and it is further ordered, that all the said persons and soldiers are hereby appointed to meet together at the said general rendezvous on the said island on the said thirtieth day of December, there to be disposed of and employed for this service under the conduct and command of captain William Fuller, of whom the governor,

* This seems to furnish evidence, that the population of the province had extended itself at this time across the Patuxent northwards, perhaps into what is now called Calvert county. Charles county had been erected by an order of the governor and council for that purpose, on the 21st of November, 1650, and Mr. Brooke made commander thereof, in pursuance, as it would appear, of his previous agreement with lord Baltimore in England.—See before, p. 376.

† The convenience of shortening the voyage to the isle of Kent most probably pointed out this place as the most proper place of rendezvous for the forces of this part of the province.

CHAPT. with the advice of the council, hath made choice of for com-
 VI. mander in chief on this present expedition, &c.* And it is fur-
 1652. ther likewise ordered, that for all such Indian prisoners, that shall happen to be taken and brought in, when this march is ended, they shall be divided according to their value upon a general division throughout the province amongst every the six, that are at the charge of setting forth the seventh, herein before mentioned, unless the provincial court shall think fit to dispose of any of them otherwise;† and that as to other purchase or plunder either in corn or otherwise, from the said Indian enemy, during this intended march, it is to go upon a general division among the commanders and soldiers to be employed in the service, as the provincial court shall direct and think fit, special regard being to be had therein of those that shall best demean themselves in the service.”

In pursuance of this order, the governor, within a few days afterwards, issued a commission to captain William Fuller, bearing date the 29th of the same month and year, purporting to be “in the name of the keepers of the liberty of England, and according to the powers given unto him (William Stone,) by the right honourable the lord Baltimore, lord proprietary of this province, by his commission to him for the government thereof, and also according to the directions of the said order,” (of which order a copy is mentioned to have been inclosed to captain Fuller with his commission,) “constituting and appointing him the said captain William Fuller commander in chief under him” (the governor,) “of all the forces to be raised for a speedy march

* Captain Fuller’s name appears frequently hereafter, as a man of considerable note and influence with the Puritans of Ann Arundel; where also some forces were appointed to be raised for this intended expedition.

† If the meaning of this clause in the above order be—that of distributing the Indians expected to be captured during the expedition, among the inhabitants of the province, as *slaves*: such appearing to be the necessary construction of it; it seems to be somewhat explanatory of the before mentioned act of 1649, entitled, “an act touching Indians;” which made it felony, punishable with death, “to take, entice, surprise, transport, or sell any *friend* Indian.” It is to be inferred from this act of 1649, that it was then deemed lawful to transport or sell any *enemy* Indian, captured in what is called solemn war; upon the old principle now exploded, that having a right to put a captured enemy to death, you have a right to make a *slave* of him, as the more humane commutation. The above order must have proceeded upon this ancient principle, it being at that time strictly conformable to the law of nations; as appears from *Grotius*, (of the rights of war and peace, B. iii. ch. 7,) who wrote this celebrated work some short time prior to the year 1625, when it was first published at Paris, under the auspices of Lewis XIII. to whom the author dedicated it.

against the eastern shore Indians, giving him thereby full power and authority, (if he thought fitting,) to raise and levy such forces as are to be raised and levied in the county of Ann Arundel according to the said order:—and to meet, according to appointment, upon the isle of Kent, the 30th day of December next, or at any other convenient time or place for this purpose, to march against all or any Indians inhabiting upon the eastern side of the bay of Chesapeake to the northward of the southerly bound of this province on that side of the bay, being over against *Wicokomico* point, and from thence in a direct line eastward to the main ocean;* and to make war upon, and through God's assistance, by all possible means, to vanquish, destroy, plunder, kill, or take prisoners at your discretion, all or any the said Indians, either by sea or land, and *being so taken to put them to death by the law of war*,† or to save them at your pleasure, and for that purpose to pursue them, if occasion be, beyond the limits of this province;‡ and in all and every the premises you are to follow, as near as conveniently you can, the directions of the before mentioned order.”

* If the “*Wicokomico* point,” above mentioned, refers to one of the points making the mouth of the *Wicomico* river in Somerset county, it could not have been “the southerly bound of the province,” as now settled. The point “from whence a direct line eastward to the main ocean,” according to the charter, must run to form the south boundary of the province, was *Watkyn's* point, so called in the charter as well as since, and which point as now determined, forms the mouth of *Pocomoke* river. The charter mentions “*Walkin's* point, near the river *Wighco*,” and from this repugnance arose the long cherished dispute as to where *Walkin's* point was. The above commission to captain Fuller demonstrates the uncertainty then prevalent even in Maryland, as to the true location of this point. Differences subsisted at this very time between Virginia and Maryland as to this boundary line between them, and which gave cause to lord Baltimore's directions in the last year, (1651,) to his governor to encourage settlers to take up lands near to those southern bounds of Maryland.

† This seems to have been a generally acknowledged *right of war* at the time of the above commission, as has been just stated from *Grotius*, in the passage before cited. Although civilized nations in Europe have renounced this right, yet, as the American Indians still continue to exercise this savage right, some doubt has been entertained by American statesmen of late, (particularly in the case of the Seminole war of 1818,) whether the law of retaliation does not still preserve this right to the United States to check the cruelties of these barbarians on their prisoners of war.

‡ This right of war,—to pass the frontiers of a neutral State in pursuit of an enemy,—is an acknowledged one at this day, under some limitations. Thus it was done by the commander of the army of the United States in 1818, in pursuit of the Seminole Indians, who had retreated into Florida, then possessed by Spain. The right must have been still stronger in the case of such pursuit from one British colony into another. The Virginians, perhaps, did not pretend to protect such retreating Indians from the pursuit of the colonists of Maryland.

CHAPT. VI. 1652. To those, who are acquainted with the climate of Maryland, it would readily occur, that the weather generally prevalent here in the months of December and January would have rendered such an expedition, as that now proposed, extremely hazardous as well as oppressive; whether it was to have been conducted by land through trackless forests, which the eastern shore of the province must have then presented, or by water down the bay in uncomfortable shallops, from the isle of Kent to the Wighcomoco or Pocamoke, where it was possible, if they penetrated far up those rivers, the boats might have been frozen up, so as to expose the forces to great hardship and danger. These considerations, as well as some others, particularly that the Indians of the western shore had gained intelligence of the intended expedition, appear to have operated upon the minds of the Puritans of Ann Arundel, so as to render the proposed expedition unpopular with them. It is probable, therefore, that no levy of men for that purpose took place in that county; accordingly we find that captain Fuller wrote from thence to governor Stone, on the thirteenth of December, in acknowledgment of the receipt of his commission, in which he says,—“Sir, I find the inhabitants of *these parts* wholly disaffected, not to the thing, but the time of the year; it being in all likelihood, (as they conceive,) dangerous for their health; first, in regard to the want of necessaries, as also want of vessels fit to transport them; and next, that it is possible, they may be frozen into the rivers, and so expose themselves to more dangers through cold and want of necessary provisions than by the enemies; and one thing more, which doth most take with me, the Indians on the west side had notice of it before your commission came to my hands, as I am credibly informed; to prevent which, a longer time were to be desired, as also that some order might issue from yourself to prohibit the revealing of your design to any Indians under some penalty, as the law of arms hath in that case provided. As for the inhabitants of Kent, who were the material cause of this expedition, by exhibiting a petition to yourself for speedy relief, as is hinted in your order, I shall, (if weakness of body prevent not,) give them a visit, and advise with them, and readily assist them if occasion be offered, with men or otherwise. Sir, let me crave this favour, not to be mistaken in what I have writ. It is far from me to slight the power God hath set over me, but am willing to submit to it, and that really as for myself, I am

ready, both now and at any time, to do yourself and the country all possible service, but it is the present apprehension of the people, that, after the extremity of the winter be past, it will be far more fit for this service.”

CHAPT.
VI.
1652.

The consequence of this representation from captain Fuller was, that the expedition was relinquished, at least for a time, and no further proceedings, relative to it, appear on record, except a proclamation issued by governor Stone, bearing date the 18th of December, (1652,) stating the intelligence he had received from captain Fuller, and that “he had, therefore, upon serious consideration thereof, and of the soldiers’ great want of apparel and other necessaries at this unseasonable time of the year, thought fit, and with the advice of the council did thereby discharge all the forces raised for the said intended march, from any further service therein, for the present, so as they may depart to their several habitations with their arms, ammunition and provision.”*

It has been thought proper to state the before mentioned intended expedition, though probably never accomplished, somewhat more in detail than may perhaps at first appear necessary, in order to exhibit the real situation of the province, in relation to the Indians seated within its territories, in a more natural and perspicuous point of view, than could have been done by a short narration of the facts comprised in these documents; especially as they contain sentiments and opinions of the colonists in those days concerning the relation then subsisting between them and the aborigines of the country, not to be found elsewhere; and evidence derived from authentic records is, in such cases, a surer ground for the historian to tread upon, than fanciful conjectures too often laid down by speculative writers upon this subject.

On the same day, on which governor Stone issued his discharge of the forces assembled, as before stated, his attention appears to have been directed to some late or previous conduct of the two commanders of the isle of Kent and Ann Arundel counties,—captain Robert Vaughan of the former and Mr. Edward Lloyd of the latter. As these two counties were so remote from the seat of government at St. Mary’s, where the office for land affairs was kept, as to make it inconvenient to the inhabitants of those counties to obtain warrants for taking up lands therein, it

Grants of
lands from
lord Balti-
more ne-
glected in
Ann Arun-
del and the
Isle of
Kent.

* The extracts above, relative to the above mentioned expedition against the eastern shore Indians, were taken from “Council Proceedings from 1636 to 1657,” p. 260 to 264, and from p. 276 to 277.

CHAPT. VI. had been thought proper, "for the ease of those inhabitants," to
1652. authorise these two commanders just mentioned, by commissions for that purpose, bearing date the 29th of July, 1650, to grant warrants for taking up lands in their several and respective counties, according to his lordship's conditions of plantation then in force in relation to the whole province. In these commissions it had been provided, as the duties of these commanders, "to cause the said warrants," so to be granted by them, "together with the particular demands or assignments upon which the same shall be granted, to be entered upon record by his lordship's secretary of the said province." For this purpose it became the necessary duties of these commanders to *transmit*, at least, these warrants, together with transcripts of all such demands or titles to land, or assignments thereof, within their respective counties, to the secretary's office at St. Mary's. These duties these commanders had neglected to perform. In the absence of other reasons to be assigned for their misconduct in this respect, the general opinion, which certainly prevailed in the province at this time, that his lordship would shortly be deprived of all his rights and authority within the province, may be suggested as the exciting cause. Mr Lloyd, at the head of the Puritans of Ann Arundel, in conformity with their wishes, would very naturally adopt such ideas; and, if the before mentioned averment in the Susquehanock treaty was well founded,—that the isle of Kent was now considered as belonging to captain Clayborne, it would also very probably account for Mr. Vaughan's conduct in like manner. Hence too we may possibly deduce the motives of Mr. Robert Clark, his lordship's surveyor-general of the province, in not making the due returns to the same office of the certificates of survey executed under those warrants within those counties. We should at first suppose, that this neglect of the surveyor-general might more probably have been that of his respective deputies in those counties, if he had any there. But governor Stone, in his order on this subject, seems to censure the surveyor for this neglect, as a *personal* misdemeanor in himself, stating,—“that his the said surveyor's former irregular and unwarrantable proceedings herein having occasioned much trouble and inconvenience, to the great abuse both of his lordship's authority and the inhabitants.” To apply a remedy to these abuses, and to support, as it were, his lordship's tottering authority within the province, governor Stone issued an order or

proclamation, on the 18th of December, 1652, of which the said commanders and the surveyor-general were expressly required to take notice, and in which, after stating the before mentioned neglect of these commanders and the surveyor-general, "to the great prejudice," as he says, "not only of his lordship in his rents due upon such surveys, but also to the great wrong and abuse of the said secretary's office, and *likely in short time to produce much confusion and inconvenience*,"*—"he declared the said commissions, or any other for that purpose, so by him granted to the said captain Robert Vaughan and Mr. Edward Lloyd; as aforesaid, to be void and null, and that no warrant or warrants for land be thereupon granted by them or either of them after the last of this present month of December, further hereby willing and requiring, as well the said captain Vaughan and Mr. Lloyd, as also his lordship's surveyor-general, that they the said captain Vaughan and Mr. Lloyd do cause transcripts of all such demands or titles of land, assignments, and warrants within their several counties, as are not yet transmitted thither, there to be entered, and that the said surveyor-general make speedy return into the secretary's office of all such certificates of survey by him already made by virtue of any warrant whatsoever not yet returned, and that he presume not for the future to survey any land within this province for any adventurer or planter, to be granted upon his lordship's conditions of plantation without some warrant from myself for authority from me, or other special warrant or direction from his said lordship here published for his so doing."†

While the Maryland colony had been thus subject, during the preceding year, to an important political revolution, affected through the orders of the mother country, as well as to internal dissensions and discontents, religious, civil, and political, it might

1653.

A scarcity
of corn.

* This "confusion and inconvenience" was, in all probability, the cause of the suit in the provincial court of chancery, in the year 1738, entitled, "Lord Proprietary vs. Jennings and others," reported in 1 *Harris and McHenry's Reports*, 92. It is probable, that Mr. Lloyd, the commander of Ann Arundel county, by virtue of the commission to him, of the 29th of July, 1650, for that purpose, as above stated, granted the warrant of the 8th of July, 1651, to Thomas Todd, for a great part of the land on which the city of Annapolis now stands, and the survey might have been thereupon made, and the land laid out for him, but, through the neglect of the commander of the county and the surveyor-general, no transcript of the right or title to the warrant was ever sent to the land office at St. Mary's by the commander, nor any certificate of survey thereof returned by the surveyor-general.

† "Council Proceedings from 1636 to 1657," p. 277.

CHAPT. naturally be expected, that the agricultural affairs of the colony
 VI. would be liable also to a dangerous neglect, and that consequent-
 1653. ly there might occur a scarcity within the province of even the
 necessary sustenance of life. A proclamation of governor Stone,
 dated the 24th of January, 1652, (1653, N. S.) seems to indi-
 cate this state of the colony. The preamble explains the cause
 and purport of the instrument. "Forasmuch as I am given to
 understand, that there is like to be some scarcity of corn in the
 province this present year, and that divers persons have and do
 take the liberty to *buy corn of the Indians* inhabiting within this
 province, and *to transport the same* out of the province into other
 parts, to prevent the like for the future," he, the governor,
 "willed, required, and commanded all and every the inhabitants
 of this province, *foreigners*, and others, that they do not pre-
 sume to transport any corn bought of any Indian within this pro-
 vince, without special license from him," (the governor,) "till
 Michaelmas next, or further order to the contrary."* This seems
 to afford proof of two facts, relative to the internal state of the
 province, at this period of time, which deserve attention; that,
 notwithstanding the fertility of a new soil, the agriculture of the
 cleared lands of the colonists was in such a wretched state, as to
 be insufficient for their subsistence; and moreover, that they
 were now indebted to the superfluity of the savages of the coun-
 try for that necessary article of their sustenance. It is probable,
 that this state of things might in some measure be owing to an
 inconsiderate application of all their domestic industry to the
 cultivation of tobacco, a fault, even at this day, too prevalent
 with the planters and farmers of the western shore of Maryland,
 as well as Virginia. The free trade, which these two colonies
 had enjoyed with the Dutch prior to their late "reducement,"
 principally in the sale and export of their tobacco, had probably
 also given uncommon encouragement to the growth of that com-
 modity, and thereby occasioned less of their attention to the cul-
 tivation of maize or Indian corn, their principal bread stuff.

Origin of
 the famous
 navigation
 act.

In this place it may be proper to observe, that the *trade of*
 these colonies—Virginia and Maryland, was about to undergo a
 considerable revolution, as well as their political government had
 done. In a few days after the council of state of England had
 given their *instructions*, before stated, for the "reducement" of
 these colonies, the parliament, with the same view of bringing

* "Council Proceedings from 1636 to 1657," p. 280.

about a rupture with the *Dutch* nation, proceeded to a measure, which has since called forth the eulogies of many modern writers. It was for the more effectual promotion of a principle, often before attempted by both James and Charles the first,—the monopoly of the colonial trade, for the entire benefit of the mother country. It has been before observed, that the leaders in parliament were desirous to commence a quarrel with the *Dutch*, probably for the purpose, as before stated, to diminish Cromwell's standing army, by calling the resources of the nation to naval expenditures. Different motives are said also to have excited the different partizans in parliament towards this measure. The encouragement of English shipping, in preference to those of the *Dutch*, especially in commerce, was so plausible a pretext for this, that Cromwell could not well oppose it. As the freight of the shipping of the *Hollanders* was at a lower rate than that of the *English*, the *English* merchants were in the habit of making use of *Dutch* ships even for importing American products from the *English* colonies into England. The *English* ships meanwhile lay rotting in their harbours; and the *English* mariners, for want of employment, went into the service of the *Hollanders*. The parliament, therefore, with unusual good sense, though not from patriotic motives, except to quarrel with the *Dutch* and ruin Cromwell, on the 9th of October, 1651, enacted that famous ordinance, commonly called the navigation act. The substance of which was:—"That no merchandize, either of Asia, Africa, or *America*, including also the *English plantations* there, should be imported into England in any but *English* built ships, and belonging either to *English* or *English* plantation subjects, navigated also by an *English* commander, and three-fourths of the sailors to be *Englishmen*."* Thus, by this act, which was made to commence on the first of December, 1651, the carrying trade of the *Dutch* from the *British* colonies to their mother country was entirely cut up; and the before mentioned ordinance of October 3, 1650, had before expressly prohibited all mercantile intercourse between the colonies and foreign states. It is apparent, that such measures could be calculated only for the benefit of the mother country. The *free trade* of the colonies with foreign nations, which, without doubt, would have been highly conducive to the growth and prosperity of such colonies,

* See this ordinance, stated somewhat more at large, in Holmes's *Annals*, vol. i. p. 354; who cites thereto Anderson, ii. 415, 416.

CHAPT. VI. was made, by an energetic republican parliament, to yield to the
 1658. sole interest of the parent state. We shall see hereafter, that the rational principle of a reciprocity of advantages between the colonies and their mother country, induced other statesmen to adopt and continue this measure, until their unfortunate final separation. It is to the credit of this republican parliament, however, that they had so much sense of justice towards these colonies as to endeavour to render to them some equivalent advantages in return for this monopoly of their trade. In the year 1652, the same parliament passed an act "against planting *tobacco* in *England*;" thus giving a legislative force to all the repeated proclamations of James and Charles the first, for that purpose.* That these restrictions on the farmers of England were considered by them as public grievances, not merely on account of the illegal exertions of royal prerogative on this subject, but as an unnecessary abridgment of the natural rights of freemen, may be fairly inferred, as well from the actual attempts in the reign of James the first to grow tobacco in England, but from an assertion of Sir Edward Coke, when a member of parliament, in a debate on public grievances in the session of 1621. "Never till within these forty years," said he, "was there any restraint made, other than by act of parliament, that a subject, being a freeholder, shall not plant what he list in his own ground."† It remains yet to be demonstrated by events still in the womb of time, whether a continuance of a reciprocity of such favours, from parent to child, would not have been more production of the *happiness* of the latter, than that unnatural hostility now sworn to be ever maintained against the former.

Hostilities
 apprehended
 from the
 western
 shore In-
 dians.

From provincial documents, still remaining on record, it appears, that considerable uneasiness and alarm were prevalent at this time among the colonists inhabiting the peninsula between the Patowmack and the Patuxent, on account of apprehensions of hostilities supposed to be meditated by the Indians, who resided on their immediate frontiers and within that peninsula. The governor and council, therefore, on the 23d of March, 1652, (1653, N. S.) "upon consideration of the danger from the Indians," as stated by them, "ordered, upon Mr. Brooke's offer of employing one of his sons in the service, that the said Mr.

* Robertson's Hist. of Amer. vol. iv. (B. IX.) p. 238.—Holmes's Annals, vol. i. p. 358.

† Chalmers's Annals, p. 49.

Brooke's son and John Shanks, or one of them, be employed as *intelligencers* amongst the Indians living upon Patuxent river, to discover concerning the Mathue Indians coming to trade amongst the Indians of Patuxent, and upon the said Mathue Indians' arrival there, with all speed, to give notice thereof to Mr. Brooke and Mr. Preston, who are, with all speed, to certify the governor thereof, that the forces to be appointed for the service, under the command of captain John Price, may thereupon march forth, to apprehend or destroy them, if it may be, and that it be left to the governor, who is desired to give direction for the appointing the forces for this employment. Also, a competent number to be of the trained band within St. Mary's, Charles counties, and Patuxent river, who may upon an alarm, as occasion shall require, be ready to meet at some place of rendezvous, under the command of captain Price, or what other commander the governor shall appoint, for the defence of the province." It appears, from captain *Smith's* first exploration of the Chesapeake, in the year 1608, that, on his entry into the Patuxent, he found three tribes of Indians situated thereon, to wit, the Acquintunachsuh, the *Patuxents*, (from whom the river without doubt took its name; or *vice versa*, they from the river,) and the Mattapanients, these last also either giving or taking their name to or from a creek emptying into the Patuxent. These tribes dwelt more together, and were more civilized and hospitable, than any other tribes, whom he had seen. We have seen before, on the first settlement of the Maryland colony at the town of St. Mary's, that these Indians came there to visit the colonists on their first landing, and that one of their chiefs then made uncommon professions of friendship to the English; which professions, it does not appear, that they ever contradicted by any subsequent conduct extraordinary hostile towards the colonists. Nor does the preceding order of the governor and council intimate any suspicion now entertained of their friendly disposition. But these Mathue Indians, whose place of residence we have no sufficient information to determine, but who were expected on a trading visit to the Patuxents, must have been some distant tribe, of whose enmity the colonists had some well founded grounds of suspicion. It does not appear, however, from our records, that these Mathue Indians, at this time at least, actually commenced any hostilities on the colonists, nor does there remain any report of the "intelligencers," or spies, who were appointed to recon-

CHAPT. VI. impose upon him." Pretending that God, in his providence, had thus thrown the whole right as well as power of government into his hands, he afterwards, on the eighth of June, by the advice of his council of officers, sent a written summons, under his own hand and seal, to about one hundred and forty persons of different towns and counties of England, Scotland, and Ireland, to meet at London on the fourth of July next ensuing. Upon these, when assembled on the day appointed, by his sole act and deed, he devolved the whole authority of the state. Among the fanatics of this convention, or *parliament*, as they denominated themselves, was one *Praise-God Barebones*, a leather seller in Fleet-street, London, who was an active member, and much noted for his long prayers, sermons, and harangues. From the ridiculous name of this prominent personage the assembly obtained, even at that time, the appellation of *Barebones' parliament*, and has been ever since so distinguished by historians.

During the existence of this parliament, however, notwithstanding the contemptible character which most historians have given it, a transaction relative to Maryland took place therein, which ought not to be passed unnoticed. It is stated by a contemporary writer, whom we have frequently before cited,* that "the pretended authority of the commissioners," (Bennett, Clayborne, and Curtis,) "for reducing of Maryland, was urged here in England by colonel *Matthews*, agent for the said Mr. Bennett and the colony of *Virginia*, when his" (Matthews's) "petition was debated before the committee of petitions of the late parliament, which began in July, 1653, and was by that committee dismissed." From this we collect, that Mr. Bennett had, prior to the meeting of this parliament in July of this year, he being then governor of Virginia, appointed colonel Samuel Matthews to be agent for that colony in England, as also, agreeably to the above expression, for himself on account of his conduct as one of the commissioners in the "reducement" of Maryland. It is to be inferred from these contests in England before the state authorities there, relative to Maryland, that lord Baltimore had appealed to those authorities against the conduct of the above mentioned commissioners, for their "reducement" of Maryland, without any special order for that purpose, as he contended. This measure, of referring the "reducement" of Maryland to

* *Langford's "Refutation of Babylon's Fall in Maryland," &c.*

the final decision of the supreme power in England, was to have been expected from the terms, on which governor Stone resumed his office of governor, as before stated, to wit, that he, together with the others before named, might "reserve and save to themselves their oaths to the lord proprietary, *until the pleasure of the state of England be further known.*" It would seem also, that colonel Matthews, being now agent, not only for the colony of Virginia generally, but particularly in behalf of Messrs. Bennett and Clayborne, two of the before mentioned commissioners for the "reducement" of the colonies on the Chesapeake, had presented his petition on their behalf to the above mentioned committee, and that these two last mentioned commissioners were now residents in Virginia, the one as governor, the other as secretary thereof. Whether these contests before the state authorities in England, between lord Baltimore and the commissioners had commenced prior to the dissolution of the long parliament on the 20th of April last, there is no evidence; but if so, the business nevertheless appears to have been renewed before the committee of this parliament of 1653, and, as stated by Mr. Langford, "was by that committee dismissed." The *dismissal* of a petition often implies a *rejection* of the prayer of that petition; and such was the construction of it in this case by lord Baltimore's friends, as Mr. Langford, in a sentence immediately subsequent to that last quoted, plainly intimates. The conduct of the commissioners in their "reducement" of Maryland would, therefore, appear from this to have been disapproved of by this committee at least, if not by the parliament of 1653. But it is proper to state here, that this allegation of the rejection of Mr. Matthews's petition by the committee of petitions, as above mentioned, was afterwards positively denied in a document entitled, "a paper relative to Maryland," which appears to have been drawn up, in the year 1656, by Mr. Bennett and Mr. Matthews conjointly, they being both then in England on business, as we may suppose, relative to both the colonies of Virginia and Maryland;* wherein they express themselves thus:—"Whereas it is said, that the committee for petitions, in the time of the little parliament,† rejected the petition of colonel Matthews concerning the

* This "Paper" is at large in *Hazard's Collections*, vol. i. p. 623; but the reader will find it also at the end of this volume in a note to be subsequently referred to.

† This "little parliament" could have been no other than the "parliament which began in 1653," referred to by Mr. Langford as before stated. Lord Clarendon calls it the "small parliament."—See his *Hist.* (folo. edit.) p. 643.

CHAPT. VI. lord Baltimore, it is not so ; they were so far from slighting the same, that they looked upon it as too high for them, and therefore ordered the business to be transmitted back again to the council of state, as more proper for their consideration, as by their order may appear.”

1653.

It is possible, that Mr. Langford might have mistaken “the transmission of the business back again to the council of state” for a *dismissal* of it altogether. But in truth, considering the ephemeral existence of these two tribunals, the little parliament and Cromwell’s council of state in 1653, there could have been little difference between such transmission and a final dismissal ; for, according to some historians, this little parliament becoming sensible and tired of their own contemptible existence, but more probably, according to others, through the crafty contrivance of Cromwell, surrendered up, on the twelfth of December in the same year, all their powers and authority back again to him, who had made them a parliament, having existed only about five months. With them must have been annihilated also the council of state, and a final period put to all such proceedings as were then before them ; and consequently to the business of the “reducement,” if it ever came before them.*

Notwithstanding these important transactions had thus taken place in the mother country, no intelligence thereof, or at least no orders in consequence thereof, appears to have been transmitted to or received in Maryland until the latter end of the present year. This circumstance may be clearly inferred from the rea-

* It is remarkable, that there is considerable contradiction in the English histories, as to the existence of *council of state* during the convention of 1653. *Rapin*, (Tindal’s edit. vol. 11. p. 71,) states, that when Cromwell dissolved the long parliament on the 20th of April, 1653, he “named a council of state, which governed the kingdom, with no other right than what was derived from the officers.” But lord *Clarendon*, (who was a cotemporary historian, and although then on the continent, yet had good information of all important passing events in England, being then the king’s chancellor of the exchequer,) expressly affirms, that when Cromwell issued his summons on the eighth of June to the different persons who were to constitute the parliament of 1653, he did it with the “advice of his council of officers, for he made yet no other council of state.”—*Hume* is totally silent as to any other council than the council of officers ; and Tindal, the continuator of *Rapin*, and who wrote subsequently to *Hume*’s History of the Stuarts, is also silent as to the appointment of any council of state, although he has added, by way of Appendix to *Rapin*, a very minute account of the convention of 1653, extracted from Ludlow’s Memoirs, and the Parliamentary History. It would seem, therefore, that there was then no other council of state than the council of officers ; who probably had more important matters to attend to than the “reducement” of the colonies.

sons assigned by governor Stone in a proclamation issued by him, on the seventh of November, 1653; the principal purpose of which was merely to adjourn or postpone the holding of a provincial court to the tenth of January following. His reasons for this measure are thus expressed.—“Forasmuch as no necessity appears of holding a *general court** so soon,” (as the time, to which it had been before adjourned,) “*no English shipping being yet arrived here*, and that, for divers reasons relating to the public welfare, it were requisite, (if please God it may so happen,) that we received some directions out of England touching the government here before a general court.”† It is probable, that the litigation between the lord Baltimore and the commissioners for the “reducement” of his province, had commenced prior to the late dissolution of the parliament on the twentieth of April, and that that event, as well as the fury of the Dutch war before mentioned, had occasioned the delay of the intelligence so anxiously expected by governor Stone. The petition of Mr. Matthews was now to be decided by the parliament which commenced in July, or by the council of state, which decision or dismissal, if it ever took place, was probably protracted to a period too late for the arrival of any intelligence thereof by November.

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1653.

It does appear, however, that lord Baltimore in England had issued certain *instructions* to the governor of his province in the early part of the present year, bearing date the 17th of February, 1652, (1653, N. S.) No copy of these instructions now appears on the records, and the substance of them is to be collected only from references to them in subsequent documents. When they were received by governor Stone, is not to be exactly ascertained. From his expressions in the proclamation last stated, of November seventh, it would seem, that they had not arrived before the date of that instrument.

It is nevertheless certain, that governor Stone must have received these *instructions* in or before the early part of the succeeding year, 1654, N. S.; for, in consequence thereof, he proceeded, on the seventh of February, 1653, (1654, N. S.) to a very important measure, which became the ostensible and alleged cause of the civil war in the province, which shortly afterwards ensued. To carry these instructions into effect, he issued

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lands, and
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writs.
1654.

* This is an uncommon instance of the use of this term in the records. The supreme court of the province was usually styled the *provincial court*.

† “Council Proceedings from 1636 to 1657,” p. 291.

CHAPT. VI. a proclamation, of the date last mentioned; in the commence-
 1654. ment of which he takes care specially and expressly to state his authority for so doing. "According to the special direction and appointment of the right honorable Cecilius Lord Baltimore, &c. These are in his the said lord proprietary's name to give notice and declare to all and every the inhabitants of this province, and others, whom it doth or may concern, that whereas his said lordship understands, that divers persons inhabiting in this province have not sued out their patents in due time for the lands which they clayme to be due unto them here, *nor have taken the oath of fidelity*, (as they ought to have done,) according to his lordship's conditions of plantation, whereby they clayme such land. Yet his lordship, out of his good affection to them, is not willing to take such advantage, as he justly might, thereupon against them, without giving them first fair warning, by this proclamation, of their error therein, but is contented, that all such persons, who clayme any land due unto them respectively by virtue of his lordship's *condicons* of plantation dated the second day of July, 1649,* shall, notwithstanding their said default, have the said lands granted unto them, as if no such default had been made. Provided always, that they doe respectively, within three months now next ensuing, *take the said oath of fidelity* according to his lordship's *declaration* bearing date the sixth of August, 1650,† and his instructions, bearing date the 17th of February, 1652,‡ and also, within the said time make their rights to the said lands appear to his lordship's secretary here, and sue out their patents, and pay to his lordship's receiver general here, or his sufficient deputy, all such arrears of rent as are due to his lordship for the said lands respectively from the time such patents ought, by the said *condicons* to have been sued out by them respectively, and also pay unto his lordship's officers here such fees as of right belong unto them respectively for

* See these Conditions of Plantation, as mentioned before, p. 375.

† This "declaration," of 1650, does not now appear on record. But, according to a subsequent declaration of his lordship, dated the 26th of August, 1651, (which see at large in note LXXVIII. at the end of this volume, and before referred to,) that above mentioned, of the 6th of August, 1650, was to express *his agreement to the alteration of the oath of fidelity*, most probably thereby referring to such alteration of that oath as had been made at the then last preceding session of assembly, by the act of 1650, ch. 29, as herein before stated in p. 423.

‡ These instructions of 1652, (1653, N. S.) though not now upon record, as above stated, yet are evidently those upon which this proclamation above was issued.

the same. And these are further also, in the said lord proprietor's name, and by his special direction and appointment as aforesaid, to declare and give notice, that in case such person or persons, so clayming any land due unto them as aforesaid, *shall not take the said oath of fidelity*, or not sue out their respective patents, or not pay the said arrears and fees respectively as aforesaid within the time aforesaid, they shall be forever after debarred from any right or clayme to the said lands respectively, which (in that case) his lordship's lieutenant here is, by his said lordship's special direction, required to cause *to be entered and seized upon* to his lordship's use. Given at St. Marie's in the said province of Maryland, the seventh day of February, *Anno Dom. 1653.*—William Stone.*

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As governor Stone appears to have acted herein entirely in conformity to the instructions of the lord proprietary, and as these instructions, if they were now extant, would not probably exhibit the inducements, operating upon his lordship's mind for embracing this interesting crisis of public affairs in England, in order to enforce the oath of fidelity, so repugnant to the inclinations of the *Puritans* in his colony, it remains for conjecture only, that this very crisis of the affairs of the mother country was most probably the operating cause of this measure, or at least for the choice of this critical period of time. It will be recollected, that the date of these instructions was about two months prior to the dissolution of the long parliament. The Presbyterians, who formed the only powerful party in opposition to the Independents, still existed in considerable force. The former were not averse to royalty, provided they could prevent the renovation of episcopacy. With these, therefore, the third or minor party, termed royalists, or old church, more naturally coalesced; hoping, without doubt, that with the restoration of monarchy, episcopacy would probably follow. But, the Independents were mostly thorough going *republicans*; and with these a small party, if they may be so called, of philosophical politicians, usually termed *Deists*, joined in their reprobation of monarchy.† It was, most probably, owing to these Deists, usually men of acute discernment, disposed to adopt the philoso-

* "Council Proceedings from 1636 to 1657," p. 293.—It is published at large also in Kilty's Landholder's Asst. p. 54.

† Of these, *Harrington*, the celebrated author of the *republican* treatise entitled *Oceana*, Harry Martin, and several others are mentioned by *Hume*, as heads or principal persons.

CHAPT. VI. phical doctrine of the natural equality of mankind, and therefore generally the most sincere republicans in their principles, that the *republican* party in England at this time, began to entertain some jealousy of Cromwell's secret designs. Seeing at once through this affected fanaticism, these philosophical politicians gave the alarm to the republican Independents. To crush at once this embryo opposition to him, Cromwell resolved to give it a death blow by a dissolution of the parliament. This view of the political affairs of England at this period of time seems to develope the only probable motives now to be imputed to lord Baltimore in issuing his instructions, of the 17th of February, 1652-3, to his government in Maryland, for strictly enforcing the submission of all the inhabitants thereof to his proprietary rights. During the contests of these conflicting parties at home, he might naturally have hoped, that the Puritans of his colony would not have been able to raise any effectual opposition to this measure. It is possible also, that the state, (or government of England,) had, prior to the dissolution of the long parliament, given either some decision in favour of his lordship or some intimation to him that such would be the event: a supposition, which seems to receive some confirmation from the condition reserved by governor Stone on his reassuming his office, on the 28th of June, 1652, as before stated, to wit, "until the pleasure of the state of England be known." The dissolution of the parliament and the consequent accession of Oliver to the supreme power seem, however, to have given a turn to the politics of the nation, of which his lordship was not perhaps aware.

It would seem also, that governor Stone had received express authority from his lordship, possibly in the same instructions of the 17th of February, 1652-3, not only to require the oath of fidelity from such inhabitants as would obtain grants of land, as just stated, but, contrary to the governor's last agreement with the commissioners for the "reducement," to cause all writs, for the future, to be issued out in his lordship's name as formerly. In pursuance of these instructions, governor Stone, in a few weeks after the preceding proclamation for enforcing the oath of fidelity, issued another, requiring all officers of justice within the province, and giving therein particular notice thereof to the commissioners for the isle of Kent county,* to issue out all

* Justices of the peace, before whom county courts were then held, were, in common parlance, called "commissioners."

writs in every county within the province in his lordship's name. His reasons for the measure are therein stated as follows :

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“ By the lieutenant, &c., of Maryland.—Whereas the right honourable the lord Baltimore, lord proprietary of this province of Maryland hath given express charge and command to myself and his other officers of justice to issue out writs within this province in his lordship's name as formerly, being a proviso granted to him by his patents, whereby sovereign dominion, faith and allegiance, is reserved to the commonwealth of England, and in that respect the making out of writs here, according to his lordship's direction as aforesaid, cannot any ways derogate from our obedience to that commonwealth in chief under God, nor our *engagement* taken thereto, which we must and ought to be very careful not to infringe.* These are, therefore, to give notice to the commissioners for the isle of Kent county, and to all other officers of justice within this province, whom it may concern, that they are required by his said lordship to issue out all writs in every several county within this province according to his lordship's said direction, who will expect a due compliance with his commands therein, as they will answer the contrary. And further, these are, in his lordship's name, to will and require the said commissioners for the said isle of Kent county, that they be careful, as far as in them lies, by raising of convenient forces for that purpose within the said county, to prevent any mischief from the Indians, of whom, as I understand, there is at present great occasion of suspicion.—Given at St. Mary's this 2d day of March, *anno domini* 1653.

WILLIAM STONE.”†

From these two proclamations it appears, that governor Stone had now, in pursuance of his lordship's special instructions, resolved to relinquish his submission to the commissioners for the “reducement” of Maryland, and for the future to cause all writs to be issued in his lordship's name, as a test of his lordship still being “the true and absolute lord and proprietary of the province, saving always the faith and allegiance and sovereign dominion due to”—the commonwealth of England, instead of “to the king and his heirs,” as expressed in the charter. Nor did this arrangement infringe upon the test called—the *engagement*,

* See the form of this engagement, ante, p. 440.

† “Council Proceedings from 1636 to 1657,” p. 297.

CHAPT. VI. which was only, "that the subscriber should be true and faithful to the commonwealth of England, as it is now established, without king or house of lords." To this resolution of the governor or some of the councillors, at least one of them, appointed by the commissioners for the "reducement," seem to have acceded, as appears from the following:—"Memorandum, that upon the 11th day of February, 1653, Mr. Job Chandler took the oath of a councillor to the lord proprietary, which was administered unto him by me his lordship's secretary,—Thomas Hatton."* It is probable, that the *oath of a councillor*, prescribed by his lordship, and annexed to his last commission of the council, dated August 12th, 1648, had been considered as annulled and abrogated by the "reducement," and reappointment thereon of the governor and council, on the 28th of June, 1652. But, as his lordship and his governor had now resolved, that things should be reinstated as they were prior to the reducement, it became necessary that the councillors should qualify themselves again under their former oath. This oath unluckily contained a clause, wherein he, who took it, swore, that he would not directly or indirectly molest or discountenance any person in the province professing to believe in Jesus Christ, and in particular *no Roman Catholic*, for or in respect of his religion.† This, in the language of the Puritans, "was in plain words to countenance and uphold anti-Christ;"‡ and hence, as from fresh fuel, blazed forth the civil war and bloodshed in the province, which shortly ensued.

Although Mr. Chandler appears to have remained faithful as a councillor to lord Baltimore, yet there is record-evidence of the disaffection of one other of the council, (colonel Francis Yardley,) who had been appointed by the commissioners for the "reducement." He was charged with "contemptuous carriage and demeanor towards the government here under the lord proprietary." It is probable, that he was averse to the proposed change and return to a proprietary government. He was, moreover, further accused with "very probable suspicion of an intention in him, in some private manner, to remove his estate out of the province, and to leave his debts and engagements here *unsatisfied*." The record, here referred to, appears in the nature of a writ issued out of the provincial court, "by the lieu-

* "Council Proceedings from 1636 to 1657," p. 296.

† See the oath in note (LXIII.) at the end of this volume.

‡ Caleb Strong's pamphlet, entitled, "Baylon's Fall in Maryland," &c.

tenant," &c., that is, the governor, directed to three persons therein named, requiring them, in case the said colonel Yardley shall endeavour or attempt to remove his said estate, or any part thereof, out of this province, before he be first licensed thereto by the government here in an orderly way, that they use their best endeavours to hinder or prevent him from so doing, by making stoppage thereof, and securing of in their possessions, till upon notice thereof to be given to the lieutenant or the *provincial court* here, they receive further order or direction herein."—Dated, 20th day of March, 1653.* Whatever connection might have existed between this proceeding and colonel Yardley's disaffection to lord Baltimore, yet, if the fact was established by testimony, as it appears from the record of this case to have been, by a deposition "taken in open court," that he was about to eloin his property out of the province and beyond the reach of his creditors, the common law authorized the writ of *ne exeat provinciam* in such case; but this writ more properly perhaps appertains to a court of chancery, and as governor Stone was, by his commission, *chancellor* of the province, as well as chief justice of the provincial court, it is possible, that it might have been ordered by him in the former capacity†.

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1654.

During the short existence of the power, now assumed by governor Stone, of acting solely in the name of lord Baltimore, and not in the name of the keepers of the liberty of the commonwealth of England, as had been appointed by Bennett and Clayborne, in 1652, several acts and proceedings of the provincial government took place, prior to its *second* "reducement" in July of this year, which it would be improper to pass over unnoticed. They will be briefly mentioned here in their natural order of time.

In the early part of the present year, governor Stone granted a written license, bearing date, March 18th, 1653-4, to a certain Thomas Adams, "with his vessel to trade or traffic with those of the Swedish nation in Delaware bay, or in any part of this province, not being enemies to the commonwealth of England; as also, with any Indians on the eastern shore of the bay of Chesapeake within this province, not in open hostility with the inhabitants here."‡ So far as this license related to a traffic

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contests
about the
lands on
the Dela-
ware.

* "Council Proceedings from 1636, to 1657," p. 297.

† See this subject discussed more at large in note (D.) in the introduction to this history already published.

‡ "Council Proceedings from 1636 to 1657," p. 293.

CHAPT. VI. with any Indians of this province, it must have been founded on
 1654. the act of assembly of 1650, before stated, entitled, "an act concerning trade with the Indians," which was thereby prohibited without such license;* but why such license was necessary for the purpose of trading with the Swedes settled on the Delaware, especially as no war then subsisted between the English commonwealth and the Swedish nation, as then did between the former and the Dutch, who had also settlements on the Delaware, does not clearly appear; unless a general power to regulate all trade, carried on by the inhabitants of the province with any neighbouring colony, should have been deemed to appertain to the prerogative powers of the lord proprietary. It is possible, that the restriction in this license,—“not being enemies to the commonwealth of England,”—might have been purposely inserted to guard against any trade or communication with any *Swedes*, who might then have been in subjection to or within any *Dutch* settlements on the Delaware; for, at this time, there seems to have been no definite limits or boundaries to those little spots of territory on that bay and river, of which these two nations were now, or had been for some years, alternately possessing and dispossessing each other. This leads us to recognize some of the events, which occurred between these two nations in their contests with each other for a territory then rightfully and truly a part of the province of Maryland. It will be recollected, that we have before deduced the disputes between the Dutch and Swedes, as well as the claims of our northern friends—the New Haven settlers, in relation to their respective settlements on the Delaware, as low down as to the end of the year 1643.† The Swedes had, within a few years after their first arrival in the Delaware, which was in the year 1627, built several forts, around each of which probably several settlements had been formed, as at a place called by them Elsingburg, situated near Salem in New Jersey on the east side of the river, and at that now called Chester in Pennsylvania; but their principal forts, which they erected in the year 1631, were—one on an island in the Delaware, which they called *Tenecum*, situated about sixteen miles above New Castle, where governor Printz erected his palace or government house, and another at the confluence of the Brandywine and Christina creeks, where a town was laid out by them and a settlement attempted. Of these

*See before, p. 397.

† Ante, p. 205, and 261.

small portions of territory they appear to have remained in quiet possession for some years; but in 1645 one of these forts, most probably that between the Brandywine and Christina, was burnt with all its buildings, and all their powder and goods therein were blown up.*

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The Dutch also still persevered in their endeavours to establish settlements on the Delaware; and in the year 1650 they first erected a trading house or fortification on that low point of land, where or near which the present little town called New-Castle in the state of Delaware now stands, called by the Dutch Niewar Amstel.† Against this measure, it seems, Printz, the governor of the Swedes on the Delaware, made a formal protest; but the Dutch proceeded on their design, and their governor, of the name of Hudde, who was appointed to rule over this trading settlement, soon after made a purchase from a nation of Indians, called the Minquaas, of a considerable tract of country to the north and south of the present town of New-Castle. The deed was dated, July 19th, 1651, and the territory ceded was described therein, as follows:—"beginning at the west side of the Minquaa or Christina kiln, (in the Indian language, named Suspecough,) to the mouth of the bay, or river, called Bompt-hook, in the Indian language—Canaressa; and so far inland as the bounds and limits of the Minquaa's land, with all the streams, &c., appurtenances and dependencies." In stating this settlement and purchase by the Dutch, it has been very justly remarked by a learned annalist,‡ that, "from this transaction alone we may infer, that no colony had hitherto been settled," that is, by the Dutch on the Delaware, "and that the possession of all parties," (the Dutch, Swedes, and English,) "was recent and unsubstantial." This corresponds with what has been remarked by ano-

* Holmes's Annals, *sub anno* 1645; who cites Hubbard's MS.

† Although Smith, in his Hist. of New York, has expressly stated, that the Dutch built their fort at Niewar Amstel in the year 1651, from whom Chalmers and other writers have copied it, yet as the Dutch ambassadors or messengers, (Augustine Heerman and Resolved Waldron,) in their manifesto delivered to the government of Maryland, dated October 6th, 1659, expressly state, "that the towne and forte—New Amstell was erected in the year 1650, the governor general and councill having thought good to remove the forte Nassaw, which had been built in the year 1623, about fifteen leagues up the river on the eastern shore," (said to be near Gloucester in New Jersey,) their allegation is here followed, as being more authentic than that of the historian of New York. See the record book in the council chamber of Maryland, entitled, "Council, H H. 1656 to 1668," p. 43.

‡ Chalmers's Annals, p. 632.

CHAPT. VI. 1654. ther writer—that the early Dutch settlers on the Delaware “made little or no improvement, *applying themselves wholly to traffique in skins and furs*, till near the time of the wars between England and them;” that is, to about the present period of time, of which we are now treating. The same writer adds:—“after them came the *Swedes* and *Fins*, who applied themselves to *husbandry*, and were the first *christian* people that made any considerable improvement there.”* It is possible, that the reason, why this deed of purchase bounded its northern limits by the Christina creek, was, that the Swedes were then in possession of the peninsula between the Christina and the Brandywine. But the *inland* extent of this Indian purchase was evidently indefinite and uncertain. On the opposite side of the peninsula—the eastern shore of the Chesapeake, there were other tribes of Indians in the occupation of territories, perhaps equally extensive into the interior, so as to reduce those of the Minquaas to a very narrow slip on the Delaware. The right of the Minquaas to sell these lands seems also rather exceptionable; being most probably founded only on the right of conquest, and not of possession. It is stated, by a well informed writer,† that “all that part of Pennsylvania, which is watered, below the range of the Kittatinny mountains, by the rivers or streams falling into the Delaware, and *the county of New Castle in the State of Delaware*, as Duck creek,” was originally occupied by a nation or tribe of Indians called by themselves Lenopi, by the French *Loups*, and by the English *Delawares*.‡ This nation, (the Delawares,) was divided into five tribes, one of which, called the Chihohocki, dwelt on the west side of the river now called the Delaware, but by them called the Chihohocki. It appears from this, that the

* See a small History of Pennsylvania and West New Jersey, (p. 3,) by Gabriel Thomas, who, as he himself has stated in this book, was one of the first adventurers among the Quakers to settle Pennsylvania, in the ship called the John and Sarah, in the year 1681, and resided there about fifteen yaars. Much the same is stated by William Penn, in one of his letters from Pennsylvania, dated August 16th, 1683. See Proud’s Hist. of Pennsylvania, vol. i. p. 260.

† Mr. Charles Thompson, in his Notes on Jefferson’s Notes.—See the appendix to the latter, note 5.

‡ It would appear from “*Heckewelder’s Indian History*,” lately published in vol. i. of Transactions of the Amer. Philos. Society at Philadelphia, that the Delaware Indians, occupying Pennsylvania and a part of the Delaware State, prior to the settlement thereof by Europeans, were only a tribe of a great nation called the Lenopi, (or *Lenni Lenape*, as he writes it,) who came from beyond the Mississippi, and peopled all the Atlantic coast from the Hudson to the Potowmack.

country, ceded by the aforesaid deed from the Minquaas to the Dutch, had, prior to this deed, belonged to the aforesaid tribe called Chihohocki—a tribe of the Delawares. The right of the Minquaas to make sale of this territory may perhaps be accounted for, by supposing, that these Minquaas were in reality one and the same nation of Indians as that called the Mingoes, by the French called Iroquois, by the English the *Five Nations*, but by the southern Indians, at the time of Smith's exploration of the Chesapeake in 1608, the Massawomecks. The similarity of sound seems to justify the supposition, that these *Minquaas*, and the nation called *Maquaas*, were one and the same, and it is certain, that the Indians called by the Dutch, *Maquaas*, were the Mingoes or Five Nations.* If the Minquaas had any right to make the aforesaid deed to the Dutch, it must have been the right of *conquest*; for, it is stated by one of the writers before cited,† that the Lenopi or Delawares, including the Chihohocki, as we may suppose, had been conquered by the Mingoes, prior to the arrival of William Penn's colony, which was in the year 1682.‡ It is probable, that this conquest might have taken place prior to this deed from the Minquaas to the Dutch, dated in the year 1651; for, we understand, as before stated, that the Massawomecks or Mingoes, or Minquaas, or Mengwes, (importing the same nation,) were extending their conquests southward as early as *Smith's* exploration of the Chesapeake in 1608. Thus, the right of conquest might render the deed valid, so far as a purchase from the

* See the account of the *Maquaas* Indians, by John Megalopensis, jr., in *Hazard's Collections*, vol. i. p. 517;—*Smith's Hist. of N. York*, p. 47;—and *Proud's Hist. of Pennsylvania*, vol. 2. p. 296. It is probable, that both the appellations—Mingoes and *Maquaas* were corruptions of that of *Mengwe*, given by *Heckewelder*, before cited, as the original name of the Iroquois, or Five Nations; who, as he says, came from the west, beyond the Mississippi, about the same time that the *Lenape* did.

† Mr. Charles Thompson, *ibid.*

‡ But this conquest, according to *Heckewelder*, (before cited,) was not by *force*, but by treachery; the Mengwe persuaded the Lenape or Delawares to assume the pacific character of women. But this supposition seems to savour too much of the passive-obedient and non-resisting principles of the United Brethren. It is more probable, that, agreeable to the warlike character of the Massawomecks or Iroquois, they conquered the Lenape and their several tribes by *force*. The account, which Smith has given of them, when he first explored the Chesapeake, corresponds with this. They were thorns in the sides of the Manahoacs and Powhatans of Virginia, and had, before that time, driven the Susquehanocks out of Pennsylvania into Maryland. According to *Colden*, in his history of them, they overran a great part of North America, carrying their arms as far south as Carolina, to the northward of New England, and as far west as the Mississippi.

CHAPT. VI. Indians could vest any right in the Dutch, unless a previous purchase by the English could be shewn; which was alleged by the New Haven traders to be the case. But, the question is,—had the Dutch any *right* to make any purchase at all from the Indians in a part of the country previously acquired by the English by the *right of discovery*? which question acquired peculiar force, when this right of purchase from the Indians by the Dutch was set up by William Penn's heirs (Englishmen) in 1735, as one ground of their claim to the three lower counties.

The governor of the Swedes, (Printz,) observing this conduct of their rivals, in endeavouring to make permanent settlements in the territory, which, as they conceived, belonged to them, formally protested against the erection of the Dutch fort or trading house at New Castle. The erection of this fortification at New Castle, together with this purchase of the Dutch from the Indians, gave considerable umbrage also to the New Haven claimants or traders on the Delaware; who, accordingly, in September, 1651, presented their petition to the commissioners of the United Colonies of New England, then assembled at New Haven, in which they remonstrated against this “new fortification and plantation *upon their duly purchased lands*, lately begun by the Dutch.” They had before made their complaints to the commissioners in 1643, of “sundry injuries and outrages they had received from both the Dutch and Swedes at Delaware bay;”^{*} but the commissioners, assembled in 1649, as it appears, did not seem much disposed to support with any effectual assistance these projected settlements of the New Haven traders on the Delaware; assigning therefor very substantial reasons, as they now appear to us. “The commissioners, considering the present state of the colonies, the English in most plantations already wanting hands to carry on their necessaryocations, thought fitt not to send forth men to possesse and plant Delaware, nor by any publick acte or consent to incurrage or allow the planting thereof: The New Haven marchants being notwithstanding left to their just libbertie to dispose, improve, or plant *the land they have purchased* in those parts, or any parte thereof, as they shall see cause.”[†] At the next meeting of the commissioners, however, in September, 1650, at Hartford in Connecticut, the New Haven traders to Delaware, renewed their complaints, and

^{*} See before, p. 206 and 261;—also Hazard's Collections, vol. ii. p. 11.

[†] Hazard's Collections, vol. ii. p. 127.

Stuyvesant, the Dutch governor, having arrived there also to meet the commissioners, in order to settle the bounds and limits between Connecticut and New Netherlands, articles of agreement were then made and concluded by the delegates respectively appointed by the commissioners and the Dutch governor; in which the delegates, after stating the pretensions of each party to the lands on the Delaware, particularly, that "the English of New Haven had presented and shewed to them several purchases they had made on both sides the river and bay of Delaware of several large tracts of land, unto and somewhat above the Dutch house or forte there,* with the consideration given to the said sachems and their companies for the same, acknowledged and sealed by the hands of the Indians, who, they affirm, were the true proprietors,"—determine, that "wanting sufficient light to issue and determine any thinge in the premises, are necessitated to leave both parties *in statu quo prius*, to plead and improve their just enterests at Delaware for planting or trading as they shall see cause; onely wee desire, that all proceedings there, as in other places, may be carried on in love and peace till the right may bee further considered and justly issued either in Europe or heere by the two States of England and Holland."

On this clause of the agreement a remark occurs, in application to the subsequent purchase of the Dutch from the Minquaas in 1651, as before stated. If the English of New Haven had made "the several purchases from the Indians of the several tracts of land on both sides of the river and bay of Delaware," which seems to be admitted by the Dutch delegates in their agreement, one of which purchases included the spot or scite of New Castle, where the Dutch erected a fort in 1651, as the English of New Haven subsequently alleged, it certainly goes far to invalidate the Dutch purchase of 1651 from the Minquaas, relied on by William Penn and his heirs in support of the Dutch right under which they claimed; the prior purchase from the Indians taking precedence of the latter.† But the truth is, that neither

* This Dutch house or fort must have been either at Nassau, near Gloucester, or at the Hoarkilns, now Lewistown; as they had not possession of New Castle until the next year, 1651.

† Penn, in his letter of the 14th of August 1683, (see Chalmers's Annals, p. 668,) has stated, that lord Baltimore could "pretend nothing to Delaware, that was at and before the passage of that patent," (to wit, lord Baltimore's charter for Maryland, of 1632,) "*bought and planted by the Dutch.*" But, if this purchase of 1651, was the *first* purchase from the Indians of their lands on the Delaware by the Dutch, as it appears to have been; (so stated by Chalmers in his Annals,

CHAPT. of them had any right to make a purchase from the Indians of
 VI. lands, which had before been granted by the English nation or
 1654. their sovereign, to lord Baltimore; to whom alone appertained
the right of extinguishing the Indian title to all lands within the
 limits of his province. The Dutch were intruders within the
 limits of that part of the American continent acquired by the
 English in virtue of Cabot's discovery, and the New Haven
 traders ought not to have presumed to counteract the grant of
 their own government in England.

The New Haven traders, however, pleased with that article of the agreement of 1650, between the commissioners and the Dutch, relative to Delaware, and flattering themselves, that, notwithstanding the commissioners had before refused to support them in their projected settlements there, yet that the Dutch were now bound not to molest them therein, began preparations, in the course of the winter of 1650-1, to make a plantation or settlement on the Delaware. Having engaged about fifty settlers, and hired a vessel for their transportation, the adventurers set out from New Haven in March 1650-1, intending to call at Manhattoes in their way, having a letter from the governor of New Haven to the Dutch governor "to prevent jealousies, and to assure him of the Englishe's peaceable and righteous intentions and proceedings." But Stuyvesant was too alert, not to be previously apprised of their proceedings. Being informed of the intended expedition, he dispatched a messenger to the New Haven governor with a formal protest against it, dated April 11th, 1651, expressing therein his intention of using against those attempting the expedition "force of arms and mortal opposition to blood shed." The adventurers had sailed from New Haven before the arrival there of the messenger with the protest, but had not arrived at Manhattoes previous to his departure therefrom. They were, therefore, unacquainted with the Dutch governor's resolution, when they arrived at Manhattoes. On their arrival there they sent two messengers on shore to deliver the letter of the New Haven governor to the Dutch governor. After perusing the letter he immediately ordered the two messengers to be arrested and to be kept as close prisoners

p. 682;) how futile was this argument of Penn. Indeed, he himself seems to have doubted its validity, in resorting, in the next sentence, to lord Baltimore's neglect "during forty years in not *reducing* it; by which neglect," (he adds,) "he *forfeited* it." A *pacific* principle truly! A man loses his right by not resorting to force, (that is, war,) to maintain it!

under guard.* That done, he sent for the master of the vessel to come on shore, as he wished to speak with him, and committed him also. After which two more of the company coming on shore, and desiring to speak with their friends under restraint, he committed them also. He then desired to see their commissions, promising to return them next day; they were delivered to him, but when afterwards demanded, he refused to return them; nor would he either re-deliver the commissions or discharge the men from imprisonment, until they engaged under their hands not to proceed on their voyage towards Delaware, but to return to New Haven; at the same time threatening them, that if he should afterwards find any of them in Delaware, he would seize their goods, and send their persons prisoners into Holland. So accordingly they returned to New Haven, preferred their petition to the commissioners of the united colonies assembled at New Haven in September of the same year; wherein they stated their before mentioned grievances, and moreover, that the Dutch had then, "(as was reported) lately begun a new fortification and plantation upon their" (the New Haven adventurers) "duly purchased lands;" alluding to the recent purchase and settlement of the Dutch at New Castle on the Delaware, as before stated. The commissioners, having attended to the petition, came to the resolution of writing to the Dutch governor, therein protesting against his injurious proceedings, asserting the English right, and requiring satisfaction for the damage done to their friends and confederates of New Haven; which they did. They at the same time declared to the petitioners, in the way of answer to their petition, that, although they did not think it proper then to enter into hostilities against the Dutch, "choosing rather to suffer injuries and affronts, (at least for a time,) than in any respects to seem to be too quick, yet, if they (the adventurers) should see cause again to endeavour the planting of their forementioned purchased lands in Delaware, at any time within twelve months from that date, and for that end should, at their own charge, transport together one hundred and fifty or at least one hundred able men armed with a vessel or vessels and ammunition fit for such an enterprise, all to be allowed and

* It is proper to subjoin here, that the Dutch subsequently, in 1653, denied, that "these messengers were put into fast hold," but asserted, that they "were civilly used and entertained at the house of the captain leiftenant of the towne, Martin Crygar." See Hazard's Collections, vol. ii. p. 260. It is probable, that they were entertained well, but kept confined to the house by a guard.

CHAPT. approved by the magistrates of New Haven jurisdiction, that
 VI. then, in case they meet with any hostile opposition from the
 1654. Dutch or Swedes, while they carry themselves peaceably and inoffensively, they may call for further aid and assistance.”*

It appears farther from the proceedings of the commissioners of the united colonies, in 1651, that soon after the outrages committed at Manhattoes by the Dutch on the New Haven settlers, as just stated, both the commissioners and Mr. Eaton, governor of New Haven, wrote to Mr. Winslow, then in London as agent for the New England colonies, concerning these injuries. Governor Eaton, after stating to him “the just title of the New Haven traders to considerable parts of land on both sides of Delaware bay and river,” desired the aid and assistance of Mr. Winslow “in procuring a patent” for them, from the government of England. The commissioners also, in their letter to the same agent, after stating their sense “of the dishonour put upon the English nation by this unjust affront of their duty to preserve the English title to so considerable a place as Delaware, desire informacon what esteeme *the old pattents for that place have with the parliament or counsell of state, where there hath been no improvement hetherto made by the pattentees*,—whether the parliament hath granted any late pattents, or whether in granting they reserve not libertie and encurragement for such as have or shall plant upon their formerly duly purchased lands, as also how any engagement by the collonies† against the Dutch upon the forementioned occasion, will bee resented by the parliament.”‡ It must be confessed, that these injuries seem to indicate a full knowledge, in the commissioners of the united colonies, of lord Baltimore’s right and title to the lands on the west side of the Delaware, and that “the old pattents,” mentioned by them, must have included lord Baltimore’s patent for Maryland, as

* See the petition, and the proceedings of the commissioners thereon, at large, in the records of the New England colonies, of September session, 1651, published in Hazard’s Collections, vol. ii. p. 192. The names of the petitioners, whom we may suppose to have been the principal adventurers in the proposed settlement, were Jasper Graine and William Tuttill. It is proper to mention here, that the New Haven traders and settlers, in June 1651, prior to this session of the commissioners for the united colonies in September of the same year, applied to the *colony of Plymouth* for aid in settling their plantation at Delaware, but the court of that colony answered,—“that they would have no hand in any such controversy.” See Hazard’s Collections, vol. i. p. 554.

† This seems to have been confined in its meaning to the New England “colonies” only.

‡ Hazard’s Collections, vol. ii. p. 181.

well as that of Ferdinando Gorges's, under which last the colonies of New England extended their claim southward to the *fortieth* degree of latitude.* But it is evident, that if by the words—"for that place"—they meant to include the scite of the Dutch fortification at New Castle and the lands purchased by the Dutch from the Minquaas, as before mentioned, Gorges's grant could not assist them; for, the most northern limits of the fortieth degree, by which New England was bounded, would have excluded them not only from the scite of New Castle, but from every part of the purchase from the Minquaas, the fortieth degree extending considerably above the mouth of the Christina creek. Indeed, the desire of the New Haven traders, backed by the commissioners, to procure a *new patent* for the lands on the Delaware, through the agency of Mr. Winslow, seems to manifest a consciousness, that the "ancient patent" of New England would not cover their newly "purchased lands on the Delaware." They ought to, and must, have known, that lord Baltimore's patent extended to where New England ended, to wit, to where the fortieth degree ended and the forty-first commenced; and yet, unaccountably, no attention to it seems to have been paid by them, unless his patent be one of those, to which they alluded in the passage just quoted. It does not appear, however, that the New Haven traders ever obtained a patent for their "purchased lands on the Delaware," as desired by them, through their agent in England. The changeable and revolutionary state of the government of England, and the approaching war with the Dutch, might have prevented it.

The disputes between the Dutch and the English of New Haven, relative to the lands on the Delaware, seem, after these violences of the year 1651, to have subsided into a state in some degree conformable to the before mentioned article in the agreement of 1650 between the Dutch governor and the New England commissioners, to wit, that both parties should remain *in statu quo prino*, till the right should be finally determined by the two states of England and Holland. But the Swedes, not being a party to this agreement, do not appear to have been bound by it. In the year 1652, a Swedish vessel of considerable force, with a few troops on board, conducted by Risingh, a Swedish officer, anchored near the fort of Niewer Amstel, (now New

* That they relied upon Gorges's grant, is evident from their expressions on the same subject in the year 1653. See Hazard's Collections, vol. ii. p. 212 and 269.

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1654. Castle;) of which he soon acquired possession by stratagem, as it is said, rather than by force.* The particulars of this stratagem are more plainly expressed by the historian of New York. Risingh, under the disguise of friendship, came before the fortress, fired two salutes, and landed thirty men, who were entertained by the commandant as friends; but he no sooner discovered the weakness of the garrison, than he made himself master of it, seizing also upon all the ammunition, houses, and other effects of the (Dutch) West India Company, and compelling several of the people to swear allegiance to Christina queen of Sweden.† On the capture of this fort by the Swedes, the name of it was changed from Niewer Amstel to fort Casimir, probably in honour of John Casimir then king of Poland, for whose election Christina had become a zealous advocate. It would seem also, that soon after this the Swedish fort between the Brandywine and Christina creeks was rebuilt.‡ The Swedes now appear, after these events, to have gained a complete ascendancy over the Dutch in their colonization of the lands on the Delaware; and perhaps, in virtue of this apparent superiority, the Indians were induced, at a meeting held by the Swedes with their chiefs, in the same year, at Printz's Hall, on Tenecum island, to enter into a treaty with them, in which they engaged "to assist and stand by each other in all future attempts, that should be made against each party." This league or agreement is said to have been faithfully kept by the Indians. The Swedes are said also to have entered into terms of friendship with both the English and the Dutch *in the neighbourhood*, either immedi-

* Chalmers's Annals, p. 632.—Some doubt, however, seems to arise, as to the time of this transaction, from the circumstance, that Risingh was not governor of the Swedes on the Delaware until the year 1654; and, as the taking possession of the fort seems to be agreed by all to have been done by Risingh, it would seem most probable, that it was done by him after he was governor, consequently not until 1654. But, as Chalmers appears to rely, for some of the facts stated by him in this part of his Annals, not only on *Smith's History of New York*, but also on "a very long and intelligent deposition of Van Sweringen on this subject," among "Maryld. Pap. iv. c. 35," (in the English plantation office,) which he cites, it is possible that he may be correct, and that the expedition might have been "conducted by Risingh" before he was governor.

† *Smith's Hist. of New York*, p. 18.

‡ Chalmers (in his Annals, p. 632,) observes, that Risingh, "soon after the capture of fort Casimir, erected on the same river, five miles higher, Fort Christiana, in honour of his queen." But, it seems to be certain, that the Swedes had built a fort, laid out a town, and made their first settlement there, in the year 1631. It is probable, however, that the fort there, built in 1631, was the one blown up in 1645, as before stated, and was now rebuilt by Risingh.

ately or soon after the preceding capture of Niewer Amstel.* CHAPT.
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1654. Whether these "*English* in the neighborhood" were the Marylanders or New Haveners, we are not informed; most probably the latter; for, it appears from subsequent documents, that the government of Maryland had been unaccountably passive in suffering both the Dutch and Swedes to intrude into their territories, and had as yet never attempted to hinder or even molest them in their settlements on the Delaware, unless the attempt by the Marylanders, in 1642, to form settlements on the Schuylkill, as herein before mentioned, might be so deemed. There was then no occasion of a treaty of peace between the English of Maryland and the Swedes on the Delaware; but between the latter and the New Haven traders more serious collisions had taken place.

In the year 1653, the New England colonies were alarmed with reports of a contemplated plot, said to have been formed by the Dutch government at Manhattoes and the neighbouring Indians, to make war upon and to break up the English colonies of both New Haven and Connecticut. The commissioners for the united colonies accordingly, at their special session at Boston called on that account in April, 1653, entered into zealous and ardent debates on the propriety of their going to war at once with the Dutch at Manhattoes. It will be recollected, that a furious naval war was then raging between the two mother countries,—the states of England and Holland, chiefly in the English channel. This might be supposed to have been sufficient in itself to have set their respective colonies in America in a state of hostility. But the interested motives of the politicians of Massachusetts preponderated. They found their trade with the Dutch rather profitable, and the expenses of their proportionate contribution to the maintenance of a war would have been somewhat oppressive. The colony of Massachusetts, being more powerful than all the three other colonies of the union combined, and the session of the commissioners being held at Boston, and the general court of that colony positively refusing to enter into any war whatever, it happened, as it ever will in all unequal confederacies, that the interest of the greater state will swallow up that of all the rest. The colony of New Haven, therefore, was left ex-

* This peace with the Dutch seems to confirm in some degree the allegation of Chalmers, before mentioned, that the capture of Niewer Amstel or Fort Casimir was in 1652, as the Dutch would not probably so soon have broke the peace they had entered into, as they did in 1655, if the capture had been made in 1654.

CHAPT. VI. posed to all the dangers attending their frontier situation. The
 1654. minor considerations of their injuries at Manhattoes and of their settlements on the Delaware, though ardently urged by them, had but little weight. The New Haven traders thus seem, from these discouragements, to have hereafter gradually relinquished their contemplated colony on the Delaware. The general court, that is, the assembly of that colony, however, seems to have continued its patronage of the undertaking. Being informed, perhaps, of the ascendancy, which the Swedes had gained over the Dutch on the Delaware, they directed their governor (Eaton) to enter into a correspondence with "the New Swedish governor, (Risingh,) concerning "New Haven's right to several parcels of land on both sides of Delaware bay and river." This was done by him in July 1654, to which an answer (in Latin) was returned by the Swedish governor in August of the same year. But this correspondence, as it is stated, was "without any satisfaction. Governor Eaton laid the affair before the commissioners of the united colonies assembled at Hartford in September, 1654; who again wrote to the "New Swedish governor," but no record appears of any answer thereto. The catastrophe attending the Swedish settlements on the Delaware, in the next year, 1655, most probably put a final period to any further correspondence on the subject.

State of the
 Roman
 Catholic
 religion at
 this time
 in Mary-
 land.

After this necessary digression, as it appears, on those settlements on the Delaware, which subsequently became so important to the province of Maryland, we are now to return to the more domestic transactions of the colony. Among these we find on our records one, which, though apparently of a trivial and private nature, not deserving the public notice of history, yet, as it develops in a particular manner the *religious* state of the province at this time, may be considered as worthy of attention. A young lady, of the name of Eleanor Hatton, the niece of Mr. Thomas Hatton, who was then secretary of the province and his lordship's attorney general of the same, had been (in some manner not mentioned in the record) persuaded or enticed to place herself under the care and in the house of a certain Luke Gardiner; who, as it seems, must have been a zealous Roman Catholic, if not a priest. Her mother, after the death of the young lady's father, the brother of Mr. Thomas Hatton, had married Mr. Richard Banks. It was suspected and stated by both the mother and uncle of this young lady—Mr. Thomas

Hatton and Mrs. Banks, to the governor and council, who probably upon this occasion were then sitting as a provincial court, that this detention of Miss Eleanor Hatton by Luke Gardiner was "to train her up in the Roman Catholic religion, contrary to the mind and will of her said mother and uncle, who had often demanded her of the said Luke, who refused to return her to either of them." It does not appear, either from the record or the concomitant circumstances of the transaction, that this enticement of the young lady away from her mother or her uncle was done with any immoral intentions of an illicit amour. The record states, that "the said girl was by her father, (brother to the said Mr. Hatton,) a little before his death, recommended to the care and tuition of her said uncle, who had been at great charge about her transportation and otherwise." From this we may infer, that Mr. Hatton's brother had died in England, and that his widow and daughter had come to Maryland to be under the care and patronage of Mr. Thomas Hatton. It would seem, that agreeably to the rules of law, as it was then and is now in relation to this subject, that the mother, being the *natural* guardian of the child, would have a right superior to that of any other person to the care and custody of her child, unless perhaps the disposition of the child, as above mentioned, by the father to his brother, Mr. Thomas Hatton, might have superceded such *natural* right of the mother, or her second marriage have deprived her of that right, and thrown it upon the guardian by will. But, as the proceedings in this case appear to have been at the joint instance and application of the mother and uncle, their conflicting rights do not appear to have entered into the question. The record of the writ, (of *habeas corpus*, as it appears to be,) further states,—“the which unsufferable dealing of the said Luke Gardiner is, (as I apprehended,*) not only a great affront to the government, and an injury to the said girl's mother and uncle, but likewise of *very dangerous and destructive consequence in relation to the peace and welfare of this province.*” The writ then commands lieutenant Richard Banks, (the husband of the mother,) to whom it appears to have been directed, to seize upon by force the person of the said Eleanor Hatton, “to bring her before the governor and council at St. Mary's to be disposed of as shall be fit,” and to arrest the said Luke Gardiner, and bring

* The governor, in whose name the writ issued, as chief justice of the provincial court.

CHAPT. him likewise before the governor and council "to answer unto
 VI. such things as shall be objected against him by the said Mr.
 1654. Hatton either as attorney general for his lordship or on his own
 behalf."* As the purpose of Luke Gardiner's detention of the
 young lady was, as alleged in the record, "to train her up in the
Roman Catholic religion," we must suppose this to have been
 the meaning of the above expressions,—“a great affront to the
 government, and of very dangerous and destructive consequence
 in relation to the peace and welfare of the province.” It must
 be acknowledged, that this goes far in demonstrating, that the
 Roman Catholic inhabitants of the province had now lost all
 their former influence in the government of the province, which
 they themselves had founded. Although there had been some
 English statutes made before this, in the reigns of James and
 Charles the first,† which imposed heavy penalties against train-
 ing up children in the Roman Catholic religion, as well as dis-
 abilities on the children themselves, yet we should have supposed,
 that the province of Maryland, founded as it was by Roman Ca-
 tholics, would have been considered as exempt from the opera-
 tion of those statutes. But, as they were notoriously made, in
 their origin, principally to please those very Puritans, who were
 now at this period of time, wielding the government of England,
 it is probable, that the severe penalties contained in them were now
 more strictly enforced than ever in that country, and that the go-
 vernment of Maryland, now in the hands of the *Protestants*, (though
 they were probably of the old church of England,) had no hesi-
 tation in the case of this sort, to avail themselves of the legis-
 lative authority of the mother country. We cannot but entertain
 ideas and sentiments of great injustice done to any number of the
 human family, who having carved out to themselves a retreat and
 an asylum for those of their own way of thinking in religion, where
 they hoped to enjoy their peculiar tenets in that religion after their
 own manner and direction, are yet, contrary to their most sanguine
 expectations, in the course of a few revolving years unexpectedly
 deprived of the supreme direction of that asylum, which they had
 thus fondly secured, as they thought, to themselves. The lord
 proprietary, and his adherents in Maryland, without doubt, enter-
 tained at this time sentiments of that nature. But his lordship,
 as well as his advisers, ought to have been sensible, that they had

* “Council Proceedings from 1636 to 1657,” p. 297.

† 1 *Jac.* 1, c. 4;—3 *Jac.* 1, c. 5;—and 3 *Car.* 1, c. 2.

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1654.

some cause to reproach themselves, with having brought on themselves, by their own conduct, this state of things. Had the Roman Catholics of Maryland followed the example of the Puritans of New England, in obstinately and pertinaciously refusing any access whatever into their colony to any person who would not agree to live under their *platform* of religion, as they called it, the Roman Catholic religion might have been at this day the established religion of Maryland. The English government, through all its own vicissitudes as well as those of the New England colonies, from their first planting to their declaration of independence, tolerated the Congregational or Independent sect, as the *established* religion of New England, and by connivance permitted them to persecute and exclude from their civil government as well as hierarchy every presumptuous intruding heretic. It is probable, that the English government would have acted in the same manner by the Roman Catholics of Maryland. But lord Baltimore imprudently, at the very outset or commencement of his colony, adopted the sentiment and resolution of universal toleration.* The admission of the Puritans into Maryland, after they had been ferreted out of Virginia by Sir William Berkeley, as has been herein before stated, together with the unfortunate coincidence of events in England, where these Puritans had seized on the supreme power, gave a death blow to the Roman Catholic interest in Maryland. From this period they never afterwards could regain their just and due influence in the province, although for many subsequent years they continued to form the majority of the inhabitants thereof.

We have herein before deduced the affairs of the mother country to the surrender by the *little* parliament, (Barebones',) of all their powers back again into the hands of Cromwell, on the twelfth of December, 1653. It has been very justly observed by several different historians,† that this surrender of the *little* parliament must have been in consequence of a preconcerted scheme of Cromwell, his military officers, and such members of the parliament as were devoted to them; for, within four days afterwards, on the sixteenth of the same month, (within which interval there was not time to have prepared the subsequent proceedings, particularly the form of government produced by them,) Cromwell proclaimed in Maryland as lord protector.

* This appears from the proceedings in Lewis's case, and the *proclamation* therein alluded to, as stated in the first chapter of this work.

† Lord Clarendon, Rapin, and Tindal in his Appendix to Rapin.

CHAPT. VI. the commissioners of the great seal, and the lord mayor and aldermen of London, were sent for to attend Cromwell and his council of officers at Westminster hall, where, in the presence of the commissioners sitting upon their usual seat, (in the court of chancery,) the declaration of the council of officers was read, by which it was declared,—“That the government of the commonwealth should reside in a single person, that that person should be *Oliver Cromwell*, captain general of all the forces in England, Scotland and Ireland, and that his title should be lord protector of the commonwealth of England, Scotland, and Ireland, and of *the dominions and territories thereunto belonging*.” Immediately after which, an instrument of writing on parchment was read, entitled—“The government of the commonwealth of England, Scotland, and Ireland, and *the dominions thereunto belonging*.” In the 33d article of this form of government, Oliver Cromwell was declared *Lord Protector*, &c., “for his life.” The administration of the government was thereby vested in the lord protector, “assisted with a council, the number whereof should not exceed 21, nor be less than 13.” All writs, process, commissions, patents, grants, and other things, which had before run in the name and style of “the keepers of the liberty of England by authority of parliament,” should for the future run in the name and style of “the lord protector;” and provision was therein made for the calling a parliament in the September following, and triennially ever afterwards. Whilst this form of government was reading, Oliver stood, in the court of chancery, uncovered and with his hand on the bible, and, when the reading of it was over, took the oath prescribed for the faithful observance of it.* This ceremony being over, Cromwell was conducted to the palace of Whitehall in great pomp; Lambert carrying the sword of State before him; and from that time the title of highness and lord protector

* See this form of government at large in *Tindal's* Appendix to *Rapin's Hist. Eng.* It is said by *Hume*, that this instrument of government was drawn up by general *Lambert*. It is also said, by lord *Clarendon*, (in his folio edit. 711,) “that Lambert had helped to make Cromwell protector upon his” (Cromwell's) “promise, that he should succeed him.” Thus are the secret causes of revolutions to be traced. Whoever will take the trouble of reading this form of government, now introduced for England, will perceive a remarkable resemblance in it to many of those subsequently made for the different States of America. It might be conjectured, that Franklin copied that injudicious first constitution, which he drew up for Pennsylvania, consisting of a single legislative assembly, with an executive council and a president thereof, principally from this of Lambert.

was given him. Immediately after, he was proclaimed as such at London, and with all possible expedition by the sheriffs and other officers throughout England, Scotland, and Ireland. We shall see also that "the dominions thereunto belonging," across the Atlantic, were ready to submit to this all-overwhelming military power in England. When we consider, that, in the early settlements of British America, voyages across the Atlantic to their colonies in that quarter of the globe were not generally undertaken in the midst of winter, about which time Cromwell's inauguration had taken place, we must allow a somewhat longer time for the conveyance of intelligence to America than it usually requires in modern times. It appears therefore, that governor Stone, in Maryland, did not receive information of this remarkable revolution in England until about the last of April or the first of May, 1654. With all proper expedition, as it seems, he hastened to comply with the requisite ceremonies on this important occasion. Without any apparent hesitation, he issued the following proclamation in relation to that great event.

"By the lieutenant and governor of Maryland.

"A PROCLAMATION.—Whereas I have lately received certain intelligence, that the government of the commonwealth of England, Scotland, and Ireland, by a lord protector and successive triennial parliaments, is already there established, and that Oliver Cromwell, captain general of all the forces of that commonwealth, is declared lord protector of the said commonwealth of England, Scotland, and Ireland, and the dominions thereunto belonging for his life, and whereas the government established here under the lord proprietary of this province according to his patent thereof is subordinate unto and dependant upon the aforesaid government of the commonwealth of England, Scotland, and Ireland in chief under God as one of the domains thereunto belonging, I have therefore with the advice of the council for this province thought it necessary, and do hereby in the lord proprietary's name make publication of the premises strictly charging and commanding all and every person or persons of what quality or condition soever inhabiting, residing or being within this province to take notice thereof and to conform and submit themselves with all due obedience and subjection to the government so established as aforesaid in chief under God, and all sheriffs and other public ministers and officers whom it may concern, are required to cause this proclamation to be forthwith

CHAPT. published in their respective counties and other usual places for
 VI. that purpose within this province, to the end that none may have
 1654. cause to pretend ignorance in this behalf. Given at St. Mary's
 the sixth day of May, *anno dom.* 1654.

WILLIAM STONE.

“Further likewise the inhabitants of this province and others whom it may concern are required to take notice, that in commemoration of this present solemnity I have thought fit to grant a general pardon of all offences committed in this province since the last general pardon with such exceptions and in such manner as shall at the publication thereof the next court be made apparent. Given at St. Mary's the day and year abovesaid.

WILLIAM STONE.”*

Agreeably to the notice expressed in the supplementary part of the preceding proclamation, another proclamation appears on the records, dated May 23d, 1654, (the time of holding the *next provincial court*, as we may suppose,) purporting to be a “general pardon,” with the following “exceptions,” to wit,—“except for murder, treason, or forfeitures incurred but not yet satisfied, and except also such persons and offences as the lord proprietary hath heretofore excepted from pardon,† and except likewise all rebellion, conspiracy, combination or endeavour used at any time heretofore by any person against the lord proprietary's right and dominion over this province.—William Stone.”‡ These exceptions demonstrate, that governor Stone had now formed his fixed resolution of renouncing the “reducement” of the province, as before settled by the commissioners—Bennett and Clayborne, and of reassuming his powers under the lord proprietary of the province.

Calvert
county
erected.

It will be recollected, that in the year 1649, an agreement had been entered into between lord Baltimore himself and Mr. Robert Brooke, both then in England, concerning the transportation of the latter, together with his numerous family, into Maryland, for the purpose of settling there; and that, in consequence thereof, a new county, called Charles county, had been

* “Council Proceedings from 1636 to 1657,” p. 302.

† The “persons,” whom the lord proprietary had heretofore excepted from pardon, were “William Clayborne, Richard Ingle, and John Durford, mariner.”—These exceptions were contained in his commission to governor Stone of August 6th, 1648. See the commission at large, as before referred to, in note (LXII.) at the end of this volume.

‡ “Council Proceedings from 1636 to 1657,” p. 303.

erected, of which Mr. Brooke had been made, by a special commission or directions from his lordship, *commander*, with all the honours, privileges, profits, &c., as were then belonging to the place and office of commander of a county.* In pursuance thereof a special "order or constitution," as it is called, had been made by the governor and council, on the 21st of November, 1650, (probably soon after the arrival of Mr. Brooke and his family into the province,) "touching the erecting some part of the south side of Patuxent river into a county by the name of Charles county."† It has been seen, that Mr. Brooke exhibited a remarkable promptness in coinciding with Bennett and Clayborne on the "reducement" of the province in 1652, and was on that occasion, in consequence thereof, without doubt, constituted by them president of the council, formed by them for the government of the province, on the displacing of governor Stone and his council. This conduct of Mr. Brooke had been, most probably, soon communicated to lord Baltimore, and appears to have given him some displeasure; for, by his instructions to the governor and council, bearing date the 28th of September, 1653, he "discharged Robert Brooke, esqr., late commander of Charles county, from being one of the council, conservator or justice of the peace, or commander of any county within this province."‡ In conformity to these instructions, as it would seem, governor Stone "thought fit, *for divers reasons relating to the public good*, and did, this day," (July 3d, 1654,) "with the advice of the council, make void and nullify the order or constitution," just mentioned, touching the erecting of Charles county, and instead thereof, as it is expressed in the record, "did now erect, make, and appoint both sides of Patuxent river into one county by the name of Calvert county, bounded on the south side with Pynehill river or creek to the head thereof, and from thence through the woods to the head of Patuxent, being the northerly bound of St. Mary's county, and bounded on the north side with the creek upon the western side of Chesapeake bay called the Herring creek, and from thence through the woods to the head of

* See before, p. 376.

† I have not found this order of November 1650 on our records, but it is stated as above in the document now on record, from whence these facts were taken, purporting to be a record of the proceedings of the governor and council, bearing date, "*Fertio die July, 1654*,"—in the book entitled, "Council Proceedings from 1636 to 1657," p. 302.

‡ These "Instructions" do not now appear on record, but it is stated, as above, in the document last referred to.

CHAPT. VI. Patuxent river, being the southerly bound of Ann Arundel county,* and the governor this day likewise appointed Mr. Richard Collet to be high sheriff of Calvert county aforesaid.”†

1654.

The province is again reduced.

This removal of Mr. Brooke, and perhaps others inclined to Puritanism, from all offices in the province, together with governor Stone’s renunciation of the “reducement,” as settled by the commissioners—Bennett and Clayborne, in 1652, and the before mentioned procedure, relative to the enforcement of the oath of fidelity to lord Baltimore, had, as might indeed have been expected from the temper of the Puritans of Ann Arundel, afforded them ample pretences for their opposition to and revolt against all lawful authority under the lord proprietary exercised by his government at St. Mary’s. It seems also, that governor Stone had, on the fourth of July, the day after the last mentioned proceeding relative to Calvert county, issued and published a proclamation, (not now extant,) in which he charged the commissioners—Bennett and Clayborne, and indeed the whole puritanic party, mostly of Ann Arundel, with “drawing away the people, and leading them into faction, sedition, and rebellion against the lord Baltimore.”‡ Induced by this pro-

* It is difficult at this day to ascertain with precision, what river or creek is here meant by *Pyne hill* river. A creek called *Piney* creek, emptying from the eastward into the eastern branch of the Potowmack, near Washington city, is the only creek or river denoted on Griffith’s map of Maryland, (the last and best,) which could answer to the above description. But a line drawn from “the head thereof to the head of Patuxent,” would run nearly north-west, about forty miles, to the north-west extremity of Ann Arundel county, quite wide of what could have been made as the northern bounds of St. Mary’s county. It rather appears, therefore, to have been intended to run from the head of Piney creek eastwardly to what is called the *western* branch of the Patuxent, which branch, possibly, in the unexplored state of the province, might have been then deemed the main branch of the river, and the head thereof—the head of the Patuxent. So that this line, stretching across the peninsula of St. Mary’s was to form a division line between the northern parts of St. Mary’s county and that part of the new erected county of Calvert lying on the western side of the Patuxent, comprehending what is at present the northern half of Prince George’s county, and indefinite as to its north-western extent. Immediately on the north and on the bay shore, however, Calvert county seems to have been now bounded by the southern extent of the elder county of Ann Arundel, to wit, by a line drawn from Herring bay “to the head of the Patuxent” again, evidently intending to the head of what is now deemed the western branch thereof, as before mentioned. But, by an order of the session of assembly of 1654, the inhabitants of Herring creek and the *Cliffs* were “to pay levy in Ann Arundel county;” which may probably have been the cause, why Calvert county does not now extend quite to Herring creek.

† “Council Proceedings from 1636 to 1657,” p. 302.

‡ Mr. Leonard Strong, then one of the leading Puritans of Providence on the Severn, has, in relation to this proclamation of the 4th of July, thus expressed himself in his pamphlet entitled, “Babylon’s Fall in Maryland,” &c. “In the

clamation of governor Stone, as well as by his general conduct in reassuming the powers of government within the province, under the name and authority of the lord proprietary, the commissioners—Bennett and Clayborne, about this time, (in July, as it would appear,) returned to Maryland, probably in the first place to Providence, (now Ann Arundel,) with intentions of effecting another “reducement” of the proprietary government of the province. For this, it was alleged by them, that they had “authority derived to them from his highness the lord protector.” But, on the contrary, there is strong evidence to shew, that this “authority” assumed by them, could be at most only an *implied* and not an *express* authority.* This may be fairly inferred from the manner, in which Mr. Strong, the active agent of the Puritans, has stated this fact. “The commissioners for the commonwealth of England,” he says, (to wit, Bennett and Clayborne,) “hearing, that new orders and instructions were come to Maryland from lord Baltimore, and that one *Scarborough*, a mischievous instrument of the lord Baltimore,† was

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year 1654, upon some instructions and relations from the lord Baltimore out of England, captain William Stone and Mr. Thomas Hatton, and the *Popish counsellors*, rose up against the reducement, displacing those whom the state’s commissioners had placed, and introducing *the old Popish council*; calling that which was done by commission from the council of state in England, rebellion against the lord Baltimore; and those, that were actors in it, factious and seditious persons: which was done by a proclamation full of railing terms, published at Providence in the church meeting.” These terms,—“Popish council and counsellors,” were evidently introduced here by Mr. Strong for the purpose of inflaming the people of England with prejudice against lord Baltimore’s government of Maryland. The charge moreover, was false; for, it is certain, that governor Stone and the majority of his council, were *Protestants*, though perhaps not *Puritans*.

* It is extraordinary, that most writers relative to Maryland, and even historians of Virginia, constantly fall into the error of imputing all the transactions of the commonwealth of England, in relation to the English colonies, to Oliver Cromwell. In Mr. Kilty’s useful work entitled, “The Landholder’s Assistant,” he, on several occasions, speaks of Cromwell’s seizure of the government of Maryland. The commissioners—Bennett and Clayborne, in their “reducement” of Maryland in 1654, certainly acted only under their former commission from the council of state and parliament in 1651, and had no express commission from the lord protector. It is certain, that the lord protector, (Cromwell,) during the whole of his protectorate, paid so little attention either to Maryland or Virginia, that he never would take the time to decide any of their disputes; as will herein afterwards appear.

† It is possible, that this might be the same “Edward Scarborough, of Accomack in Virginia,” before mentioned, (see p. 417,) whom Sir William Berkeley had sent, in 1651, to fix a settlement on Palmer’s island, at the mouth of the Susquehanah. He must have been at that time greatly hostile to lord Baltimore.

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1654. gone up to Maryland, resolved to come and see in what condition their affairs stood." This seems to leave a strong inference, that these commissioners acted on the present occasion (the second "reducement,") altogether under their former authority—the commonwealth of England, and not under the protector; for, if new orders had come to them from his highness the lord protector, Mr. Strong, their zealous partizan, would not have failed to have stated, in his pamphlet, so important a circumstance towards the vindication of these commissioners. On the contrary, he has expressly stated, in his pamphlet, a circumstance further corroborating the supposition, that the commissioners,) Bennett and Clayborne) acted, on this second "reducement" of Maryland, under no other authority than their first commission from the council of state and parliament for the "reducement" of Virginia, and of Maryland also, as they construed it; in which commission captain *Curtis* was also a commissioner. He says, that "at the assembly of October 1654, there was a full and lawful representative of the whole province, where the act of reducement of this province *by commission from the council of state in England* to Richard Bennett, esqr., colonel William Clayborne, and *Edmund Curtis*, was freely and fully acknowledged by the whole assembly; the burgesses of every respective county and limit confirming the same, and submitting thereunto." The acknowledgment of the act of "reducement" of Maryland by the assembly of October, 1654, here referred to by Mr. Strong, seems to be the act of that assembly, entitled, "The act of recognition," (herein after more fully stated,) in which, although the names of Mr. Bennett and Mr. Clayborne are mentioned as commissioners, without that of Mr. Curtis, as is done by Mr. Strong, yet Mr. Strong's comment on that act, (he himself having been at that session of assembly a sitting member,) serves to demonstrate, that the first commission, which included captain Curtis as well as Bennett and Clayborne, was the only commission intended by the said act, and under which the two last mentioned commissioners, (Mr. *Curtis* being either absent or deceased,) acted on the occasion of this second "reducement." But Mr. Langford, in his "refutation" of Mr. Strong's pamphlet, has positively denied, that they had any such authority from the lord protector. He says, "and yet notwithstanding, after the said dismissal," (of Mr. Matthews's petition to the parliament, which began in July, 1653, before mentioned,)

“and dissolution of that parliament, the sayd Mr. Bennett and captain Clayborne did again, in July, 1654, come into Maryland, and with the assistance of some of the people above mentioned,” (the Puritans of Providence,) “by force of arms turned out captain Stone and the lord Baltimore’s other officers, and put others in their roomes; *by what authority no man knows*; for, although they had had, as they pretended, an authority, (which in truth they had not,) from the parliament which was dissolved in April 1653, to do what they did in Maryland in 1652, according to Mr. Strong’s relation, yet, after the dissolution of that parliament, the authority from it ceased, so as all proceedings in prosecution thereof afterwards was unwarrantable, unless that authority, which they pretended, had been given them by an act or ordinance of parliament for a certain time not expired, or confirmed by the succeeding supream authority heer,” (in England,) “which it was not.”

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The commissioners having now come up from Virginia to Maryland, whether lawfully authorised or not by the present government of England, proceeded in their holy work of rooting out the “Popish councillors” of Maryland. It may be best here to follow their own statement of their proceedings on this occasion.* About the fifteenth of July, “they applied themselves to captain William Stone the governor, and council of Maryland;” (for what purpose they do not expressly state, but it is to be inferred, for the purpose of inducing the governor and council to submit to their directions;†) “who, returning only opprobrious and uncivil language, presently mustered his whole power of men and soldiers in arms, intending to surprise the said commissioners, and (as could be imagined) to destroy all those that had refused the said unlawful oath, and only kept themselves in their due obedience to the commonwealth of England, under which they were reduced and settled by the parliament’s authority and commission. Then the said commissioners, in quiet and peaceable manner, with some of the people of Patuxent and Severn, went over the river of Patuxent,‡ and there at length

* This *statement* appears by way of *preamble* to their order, declaration, or “commission for the administration of justice,” &c., dated July 22d, and enrolled August 8th, 1654; which the reader will find at large, as hereafter more particularly referred to in note (LXXXIV.) at the end of this volume.

† Mr. Strong says, they “applied themselves in a peaceable and loving way to persuade them into their due and promised obedience to the commonwealth of England.”

‡ From this it would appear, that the scene of these first negotiations was on the Calvert side of the Patuxent; from whence the commissioners supported by

CHAPT. received a message from the said captain Stone, that the next
 VI. day he would meet and treat in the woods; and thereupon be-
 1654. ing in some fear of a party to come from Virginia he condescend-
 ed to lay down his power lately assumed from the lord Balti-
 more, and to submit (as he had once before done) to such go-
 vernment as the commissioners should appoint under his high-
 ness the lord protector."

It will be recollected, that Mr. Bennett, one of these commis-
 sioners, now regulating the affairs of Maryland, and now advan-
 cing in hostile array against the legitimate governor thereof, was,
 at this very time also, governor of Virginia.* It is to be pre-
 sumed, therefore, that this "party to come from Virginia" had
 been preconcerted and directed by governor Bennett's orders, so
 as to afford timely support and aid to the Puritans from the Sev-
 ern and the Patuxent, then under his own special command,
 for the more certain and effectual reducement of the colonists of
 St. Mary's.† With the Puritans from the Severn in his front

the Puritans from the Severn and such of their partizans on the Patuxent, as de-
 clared for them, advanced across that river into St. Mary's, as a body of armed
 militia would, "in a quiet and peaceable manner," where they met with no op-
 position.

* This is confirmed by an extract from the records of Virginia, inserted by
 Burk, in his Hist. of Virg. vol. ii. p. 100, note; wherein the appointment of Mr.
 Digges, as one of the council of Virginia, by Richard Bennett, governor, is
 stated, as of the 22d of November, 1654.

† It is not improbable, that this expected "party from Virginia" was to have
 been composed of a levy of men from the counties of Northumberland and West-
 moreland, situated just across the Patowmack, nearly opposite to St. Mary's
 county; which party would have then taken the inhabitants of St. Mary's in the
 rear, when they were marching to oppose the Puritans of Severn on the Patux-
 ent. It is worthy of remark, that these counties of Virginia, opposite to the
 then settled parts of Maryland, appear to have made greater and earlier progress
 in population than any of the other counties of Virginia, except those situated
 on the James river. From an extract from the records of Virginia, (stated by
 Burk, in his Hist. of Virg. vol. ii. p. 101,) bearing date November 20, 1654,
 wherein the number of burgesses for each respective county, (in Virginia,) is re-
 gulated, it appears, that there was not at that time a single county in all that in-
 termediate space of country between the York and Rappahanock rivers, except
 Gloucester county; which was to send two burgesses to the assembly; while, in
 the northern neck, as it is called, there were the counties of Northumberland,
 Westmoreland, and Lancaster, of which the two last mentioned were to send
 two burgesses each, and the first one only. The population of Westmoreland, at
 this time, is to be more particularly ascertained by a statement in the same ex-
 tract, that Westmoreland then contained "170 tithables." According to Beverly,
 (Hist. of Virg. p. 218,) who wrote in the beginning of the eighteenth century,
 "all white men, above the age of sixteen years, were called *tithable*." Negroes
 also were counted as tithable persons; but of them, we may suppose, that in
 1654 there were very few in these northern counties. This would give to those

and the Virginians from the northern neck in his rear, governor Stone could with prudence do nothing else than submit, as just stated, and thereupon the commissioners issued their order or declaration, bearing date, "at Patuxent river in the province of Maryland, the 22d day of July, 1654," comprising therein a commission "for the conservation of the peace and public administration of justice within the province of Maryland to captain William Fuller, Mr. Richard Preston, Mr. William Durand, Mr. Edward Lloyd, captain John Smith, Mr. Leonard Strong, Mr. John Lawson, Mr. John Hatch, Mr. Richard Wells, and Mr. Richard Ewen,* or any four of them, whereof captain William Fuller, Mr. Richard Preston, or Mr. William Durand to be always one, to be commissioners for the well ordering, directing, and governing the affairs of Maryland under his highness the lord protector of England, Scotland, Ireland, and *the dominions thereof*, and in his name only and no other." The commission further authorised them to appoint and hold courts of justice, and to proceed therein as near as might be to the laws of England, and "also that they summon an assembly, to begin on the 20th day of October, (then) next, for which assembly all such should be disabled to give any vote, or to be elected members thereof, as have borne arms in war against the parliament, or *do profess the Roman Catholic religion*." By the same commission Mr. William Durand was appointed secretary of the province, and captain John Smith, sheriff, of St. Mary's county; as we may suppose, though not so expressed. Annexed to the fore-

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1654.
The government vested in captain Fuller and a council.

three counties, in the ratio of their burgesses, an effective militia of white men, above sixteen years of age, to the number of four hundred and twenty five. If governor Stone, therefore, was under "fear of a party to come from Virginia," amounting to even three hundred militia, which was considerably more than all his own little army could have amounted to, it certainly was most prudent in him "to submit as he had once before done."

* It is probable, that all these gentlemen were Puritans, and most of them leading men of that party of them, who had settled at Ann Arundel. Captain Fuller was probably a *military* man, and might have been in the service of the Puritan army in England. We have seen him before, (p. 458,) appointed as the commander of some militia, who had been ordered to march against the Indians of the eastern shore, and we shall soon see him again as commander in chief of the Puritans in the decisive battle on the Severn between our contending provincial parties. Mr. Durand was the first *elder* elected by the Puritans on the Severn, when they first settled at Ann Arundel; and Mr. Edward Lloyd had been the first commander of Ann Arundel county, appointed by governor Stone after the organization of the county. Mr. Leonard Strong was subsequently the agent of the Maryland Puritans in England, where he wrote his before mentioned pamphlet, entitled, "*Babylon's Fall in Maryland*," &c.

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1654. going commission, there appears on the present records a written order, signed by Bennett and Clayborne, and addressed to Mr. Thomas Hatton, the secretary of the province, appointed by lord Baltimore, as before stated, requiring him to deliver the records of the province and all the papers concerning the same unto Mr. William Durand.*

Thus we see, as is usual on all such revolutions, the victorious party carefully appropriating to themselves all the offices and emoluments, of which their opponents were possessed. This, from its general usage, might have been expected. But the illiberality, and indeed ingratitude, of these Puritans, on the present occasion, in respect to the disfranchisement of the Roman Catholics, as above stated, deserves the severest reprehension, and can admit of no palliation. When, through the imprudent liberality of lord Baltimore, in originally granting indulgence to every sect to settle within his province, and afterwards more particularly, through the special permission of his government at St. Mary's, in allowing these Puritans to form their settlements on the Severn in Maryland, after they had been driven out of Virginia, an asylum had been thus generously granted to them; that they should rise up against their benefactors, seize the reins of the government into their own hands, and then proscribe and interdict these very benefactors from all their political rights, and, as subsequently appears, cruelly *sequester* their property from them as *delinquents*, was such a shameful sacrifice of all *moral* feelings at the shrine of *religious* zeal, as cannot but cover their descendants in the province at this day with confusion and regret. Some apology, perhaps, may be made for them, by observing, that the instrument of government, by which Cromwell had been then lately installed "lord protector of England," &c., (on the 16th of December, 1653, as before stated,) contained (in the 14th, 15th, and 16th sections thereof,) similar disabilities imposed upon all those, "who had aided, advised, assisted, or abetted in any war against the parliament, since the first day of January, 1641; or who had advised, assisted, or abetted the rebellion of Ireland, as also on all such *who do or shall profess the Roman Catholic religion*." All such persons were thereby declared to be "disabled and incapable for ever to be elected, or give any vote in the election of any member to serve in parliament." It was therein further declared,—"that all votes and

* See note (LXXXIV.) at the end of this volume.

elections given or made contrary, or not according, to these qualifications, shall be null and void : and if any person, who is hereby made incapable, shall give his vote for election of members to serve in parliament, such person shall lose and forfeit one full year's value of his real estate and one full third part of his personal estate ; one moiety thereof to the lord protector, and the other moiety to him or them who shall sue for the same."* Agreeably to this important clause of the constitution an order was given, at the time of issuing the writs of election,—“That no person, who had ever been against the parliament during the time of the civil war, *or the sons of any such persons*, should be capable of being chosen to sit in that parliament ;”—nor were any such persons made choice of.† This severe proscription or disfranchisement of a very large portion of the people of Great Britain, and much more so of Ireland, seemed at this day to have been naturally congenial with the acknowledged arbitrary government of Cromwell. But, why should the petty Puritans of Maryland have followed the example? Gratitude ought to have whispered to them, that the readers of their history two hundred years afterwards would frown with indignation upon their conduct.

Captain Fuller and his fellow commissioners, it seems, faithfully complied with their orders in summoning an assembly to meet on the 20th of October, as directed. On the meeting of the assembly on that day, at Patuxent, where it was held,‡ they appear to have sat together as forming only one *house*, and not as before, divided into two houses—upper and lower. Captain Fuller is enumerated, on the record of the “assembly proceedings,” at the head of a list of the members then “present.” Mr. Richard Preston, (who was next to captain Fuller in the preceding commission for the government,) is designated on the list as *speaker* of the assembly. The names of all the other commissioners for the government, appointed with captain Fuller, in the preceding commission, appear also in the list of members

An assembly called, which meet.

* Copies of this important political instrument or form of government seem to be scarce. It is inserted in none of the Histories of England, in use at the present day, except by *Tindal*, in his Appendix to Rapin's Hist. of England.

† Clarendon's Hist. (folio edit.) p. 647.—Rapin's Hist. (Tindal's edit.) vol. 11, p. 84.

‡ As it appears from subsequent documents, that the records of the province, delivered up by Mr. Hatton to Mr. Durand, were by the latter deposited and kept at the house of Mr. Preston “at Patuxent,” we may infer, that the Puritans had now fixed upon that place as the seat of government, and that this assembly was held at the house of Mr. Preston. But, where Mr. Preston's house was situated, or on which side of the Patuxent it was, we are not enabled to determine.

CHAPT. "present;" together with the names of seven others not in the
 VI preceding commission; making in all sixteen members, inclu-
 1654. ding captain Fuller and Mr. Preston the speaker. It appears from one of the acts of this session, that Mr. Thomas Hatton, the former secretary, and Mr. Job Chandler a former councillor, had been chosen burgesses to this assembly "for the county of St. Mary's and Patowmack river," and had been so returned by the sheriff. They appeared in the house accordingly, but "declared before the assembly, that they refused to sit and act as burgesses, in respect that they, the said Thomas Hatton and Job Chandler, had taken an oath to the lord Baltimore, and for other reasons expressed in a writing by them subscribed and left with the secretary." The assembly, on this declaration, made an *order*, "that a new writ for a second choice of burgesses for the limit aforesaid should be issued to give power to the sheriff for a new election of burgesses to supply the default and *delinquency* of the said Thomas Hatton and Job Chandler; and accordingly the sheriff returned Mr. Arthur Turner and Mr. John Wade chosen burgesses by the *unanimous* consent of the freemen inhabiting the said county of Saint Mary's and Patowmack; and the said Mr. Arthur Turner and Mr. John Wade appeared and freely offered themselves to the service of the commonwealth in this province, and were approved members qualified for that end.

It will be recollected, that the commission to captain Fuller and others, for the government of the province, just stated, directed, that "all such should be disabled to give any vote or to be elected members thereof," that is, of the assembly to be held on the 20th of October, "as had borne arms in war against the parliament, or professed the "Roman Catholic religion." As the majority of the inhabitants of St. Mary's county were at this time undoubtedly of the Roman Catholic religion, they were by this clause disfranchised of their political rights, either of voting or being voted for. We have before stated our supposition, that the *Protestants*, to whom lord Baltimore had entrusted the administration of his government of the province, to wit, governor Stone, Mr. Secretary Hatton, and the several councillors, whom he had appointed, were not *Puritans*, but most probably, (as may indeed be strongly inferred from this violent opposition of the *Puritans* on the Severn against their administration,) Protestants of the old church of England. It is probable also, that the few Protestants of St. Mary's, besides those to whom the govern-

ment had been thus entrusted, were, for the most part, of the same old church also. It would then have been natural, that such men as Mr. Hatton and Mr. Chandler, formerly the principal officers of the proprietary government, should have been the objects of their choice. Under all these circumstances it becomes difficult to reconcile with the truth of facts the foregoing expression in the record just quoted; to wit, that "Mr. Arthur Turner and Mr. John Wade were chosen burgesses by the *unanimous consent of the freemen* inhabiting the said county."* We fear, that such a choice of burgesses savoured too strongly of our elections in modern times; in which the choice being made and dictated by a *few* leaders in *caucus* assembled, the *many*, who were entitled to vote, had really and truly nothing to say upon the subject, except to do as they were bid.

Mr. Hatton and Mr. Chandler, however, were not to be let off on this occasion by the assembly so lightly as they might have expected. A new election had been attended with some expense chargeable to the county. If these two gentlemen had informed their electors, previous to their election, that they could not serve in the assembly, if elected, such expense would then have become justly chargeable on the county; but, if they had neglected so to do, it was considered as their default, and, in the opinion of the assembly, they were liable to the charges and expenses of such new election. This is to be inferred from the following order of the assembly passed towards the latter end of the session:—

"It is ordered by the assembly, that, whereas some charge hath been brought to this house by the sheriff, occasioned by the default of the burgesses of the county of St. Mary's and Patowmack, viz. Mr. Thomas Hatton and Mr. Job Chandler, so that there was a necessity of proceeding to a new election, that this charge cannot be levied on the whole,† but there where the default was made, that is, on the county of St. Mary's and Patowmack, and if the fault appears not to be in the electors, but in the said Hatton and Chandler, then the said county hath liberty granted to recover the charge on the *delinquents*."

The first proceeding of this assembly, after being thus organized, was, as generally occurs on all revolutions, the ratification

Their proceedings.

* Upon the same grounds we may ascertain, how much credit is due to Mr. Strong's assertion, before quoted, from his pamphlet entitled "Babylon's Fall," &c.—wherein he says, that "at this assembly there was a full and lawful representative of the whole province."

† That is, "on the whole" province.

CHAPT. of their own assumed powers. For this purpose they passed
 VI. and enacted, what was entitled "the act of recognition." For
 1654. the title of this act, that of the assembly of 1650, for the "re-
 cognition" of lord Baltimore's authority within the province,
 herein before stated, seems to have afforded a precedent; but,
 these acts do not appear to have been founded upon analogous
 causes, inasmuch as lord Baltimore's authority over the province
 does not appear to have been ever superceded by any other os-
 tensible government, although a rebellion against his government
 had certainly existed. This present "act of recognition" seems
 to have been founded merely on *revolutionary* principles.

"It is enacted and declared in the name of his highness the
 lord protector of England, Scotland, and Ireland, and *the do-
 minions thereunto belonging*, and by the authority of this present
 general assembly, that the reducing of this province of Mary-
 land by power of the supream authority of the commonwealth
 of England, committed to Richard Bennett, esq., and colonel
 William Clayborne, and the government as it is now settled by
 commission granted to captain William Fuller, Mr. Richard
 Preston, Mr. Wm. Durand, Mr. Edward Lloyd, Mr. Leonard
 Stronge, Mr. John Hatch, Mr. John Lawson, Mr. Richard
 Wells, Mr. William Parker, Mr. Richard Ewen, is acknowledg-
 ed by this assembly, and freely and fully submitted unto, and
 that no power, either from the lord Baltimore or any other, ought
 or shall make any alteration in the government aforesaid as it is
 now settled, unless it be from the supream authority of the com-
 monwealth of England exercised by his highness the lord pro-
 tector immediately and directly granted for that purpose; that,
 after publication of this act, all the inhabitants of this province
 are required to declare in particular and express terms, under
 their hands, their owning and accepting of the present govern-
 ment and subjection thereunto; that all such person or persons
 as deny the present government, or do, either in word or deed,
 vilify or scandalise the same, or, by actions secret or open, dis-
 quiet, oppose, [or] disturb the same government, shall be ac-
 counted offenders against the lord protector of the common-
 wealth of England, the peace and welfare of this province, and
 dealt with according to their offence.

"That no commission or power shall be owned or received in
 this province other than that which is already settled therein,
 but that which is the supream authority of the commonwealth of

England shall immediately and directly grant and confirm; and whosoever shall publish any commission, proclamation, order or declaration, writ or summons, which is not from the supream authority, so granted as aforesaid, shall be accounted an offender against the public peace and welfare of this province, and dealt with accordingly.”*

Having thus provided for the security of the government, as established by them, they then proceed to a declaration (in the form of another act,) of some of the rights of their subjects, the inhabitants of the province; shortly expressing themselves thus:

“It is the mind of this assembly, that any free subject of the commonwealth shall have free liberty, not only by petition to seek redress of grievances, but also *to propound things necessary for the public good*, provided that it be orderly done.”

The latter part of this declaration most probably had a reference to the old former disputes, which had taken place between the lord proprietary and the provincial assemblies, in respect to the right, claimed by him, of initiating or propounding laws to be enacted by those assemblies. This right seems, however, to have been here strangely reversed. Of the right of the lord proprietary to propound laws to the assembly, he being a branch or constituent part of the government, some question might arise; but, that every subject or inhabitant of the province should have this right, could be reconciled only by the paucity of those inhabitants. The policy of the measure might be tested by suggesting the adoption of it by congress or any of the state legislatures. What an inundation of business they would soon have on their hands!

Next to their civil and political rights, those of religion seem to have attracted the attention of this assembly. The follow-

* Chalmers, (in his Annals, p. 223,) has stated, in reference to this act, that “the assembly naturally passed, in the first place, an act of recognition of *Cromwell's just title and authority; because from him it had devised its present power.*” But, it is evident, from a perusal of the foregoing act, that it was not intended merely as a recognition of Cromwell's title or authority, but principally of their own. Neither does it appear from this act, that the commissioners—Bennett and Clayborne had their “present power” from Cromwell for their proceedings in this their second “reducement” of Maryland, but acted only under their former commission of 1651, in which Curtis was included. Mr. Chalmers was most probably misled by inspecting only the *title* of the act, as it is in Bacon's Collection of the Laws of Maryland. Not having the whole of the act before him, he supposed, from the *title*, that it was a “recognition” of Cromwell's authority; which, indeed, stood in no need of any colonial bolstering.

CHAPT. VI. ing law, enacted by these Puritans at the present session, delineates their character, as to religious toleration, more than
 1634. volumes, which have been written on the subject. We have before stated this act of assembly,* to shew the comparative disposition of the different sects of religion, then contending for the supreme power within the British dominions, to indulge their opponents in the exercise of their religious opinions, and and have there hazarded the assertion, that neither the Roman Catholics nor the Puritans, although contending for what they called—religious liberty, had the slightest idea of ever granting that liberty to others, should they ever obtain the mastery of affairs. With respect to the latter this act affords abundant proof.

“An act concerning religion.”

“It is hereby enacted and declared, that none who profess and exercise the *Popish* (commonly called the *Roman Catholic*) religion, can be protected in this province, by the laws of *England* formerly established, and yet unrepealed: Nor by the government of the commonwealth of England, &c., but to be restrained from the exercise thereof. That such as profess faith in God by Jesus Christ, though differing in judgment from the doctrine, worship, or discipline, publicly held forth, shall not be restrained from, but protected in, the profession of the faith and exercise of their religion; so as they abuse not this liberty to the injury of others or disturbance of the peace on their parts. Provided, such liberty be not extended to *Popery* or *prelacy*, nor to such, as under the profession of Christ, hold forth, and practise licentiousness.”

The prior part of this act, (as far as the words—“exercise thereof,”) which may be termed the *disabling* clause of the act, was in conformity to that part of the new form of government for England, before referred to, which imposed similar disabilities. The latter part or remainder of this act, which may be termed the *enabling* or tolerating clause, was a literal transcript of the XXXVII. section of the same instrument of government. Our Puritans, perhaps, may be said, therefore, to have been in some measure excused for following so closely the example of the mother country; but, it must be recollected, that circumstances had placed them, in relation to the proprietary government of Maryland, in a peculiar situation. There is a *gratitude* due

* In the Introduction to this history already published, p. 195.

to governments, or to those who administer them, which sometimes places a set of individuals somewhat under the same moral obligation as an individual receiving a favour from the hand of a private person. It becomes a small abridgment of the full exercise of a power, which they might otherwise wield to its full extent.

CHAPT.
VI.
1654.

In further conformity to the form of government, recently established in England, our colonial Puritan assembly now made an act also for "assemblies every three years." This must have meant, as it then did in England, that there should be a new election of members "every three years," but to hold their sessions as often as convenient or requisite.

Agreeably to the ostensible morality generally held out by the Puritans, they did not omit, at this session also, to make several provisions by different acts to enforce the obligation and observance of moral principles and duties. For this purpose they passed several distinct acts,—“concerning drunkenness;—concerning swearing;—concerning false reports, slandering, and tale bearing;—concerning the Sabbath-day;—and concerning adultery and fornication.”† Laws against these offences had been passed at former sessions of assembly, but perhaps not so as to suit exactly the temper of the present rulers. Upon the same principle they appear to have travelled over much of the same ground of legislation as had been provided for by their predecessors; particularly in relation to the Indians; to wit, against the “stealing of Indians;‡—selling of guns, powder, or shot to

* By the second section of this act,—“Every person, *who should see any one drunk*, and should not, within three days, make it known to the next magistrate, should be liable to the fine of 100 lb. tobacco.” This fine was the same as had been imposed on the principal offender by the first section. What an *espionage* would such a law introduce among our grog-drinkers at this day!

† The punishment for these two last mentioned offences—adultery and fornication, was such “as the commissioners authorized thereunto” (that is, the justices of the court,) should adjudge and determine, *not extending to life or member.*” The assembly here deserve some credit in not extending their punishment for these offences quite so far as their sister colony of Massachusetts, as well as the parliament of the mother country, had previously done, by making these offences punishable with *death*. See before, p. 427.

‡ This act made the stealing and selling, or transportation of any *friend* Indian punishable with *death*, as a former act of 1649 had done. Although it cannot be inferred from this act, that the *slavery* of Indians was then held lawful, yet from other acts of assembly before mentioned, (see p. 359,) it would seem to have been sometimes practised by some of the inhabitants of the province. The same inference may be made from an act of assembly of *Virginia* in this year, in which, to induce the Indians to trust their children with the whites to learn *trades*, the assembly “engaged that they shall not be used as *slaves*.” Burk’s Hist. of Virg. vol. ii. p. 103.

CHAPT. VI. the Indians;—delivering of guns to them;—and concerning the
 VI. trespasses of Indians;—or a war with them;—and of treating
 1654. with them.” It was also thought proper at this session to repeal the former act of 1650, whereby the settlement of Providence on the Severn had been erected into a county under the name of Ann Arundel, so far as to direct “that the county now called Ann Arundel county should be called and recorded by the name of the county of Providence, this being the first name by which it was known; the bounds thereof to be Herring creek, including all the plantations and lands unto the bounds of *Patuxent* county, that is, to a creek called Mr. Marshe’s creek, otherwise called Oyster creek.” *Patuxent* county was erected by another distinct act of this session, and appears to have been the same as that before erected by an order of governor Stone, (July 3d, of this year,) under the name of Calvert county.*

The laws of this session being numerous, (amounting to forty six in number,) and most of those, not before mentioned, appearing to be but repetitions of former acts, they must be here omitted, with the exception of two; which, relating to the old stumbling block of the Puritans—the oath of fidelity to lord Baltimore, as being the indispensable preliminary to “rights of lands,” cannot with propriety be passed over without some notice. The former act, entitled, “an act concerning rights of lands,” was intended to counteract the proceedings of lord Baltimore and his government here, in refusing patents without the previous oath of fidelity, with the reasons of the assembly for the same.

“*An act concerning rights of land.*”

“The assembly perceiving by the conditions of plantation which are imposed upon the inhabitants of this province of the lord Baltimore, and by his proclamation directed to his officers here, that none can hold any land of his lordship without violation of the liberty of his conscience, which he binds to take an oath inconsistent with the laws of England now in force and published, and so contrary to their engagement to his highness the lord protector, and the commonwealth of England;† and all those, that do not take such an oath, shall lose all their lands, as seized for his lordship’s use; the execution whereof efficaciously to be performed, he requireth and chargeth his officers in his

* See before, p. 499.

† The unreasonable grounds of this objection to the oath of fidelity to his lordship will appear, by referring back to p. 404 and 474, 475.

own name to attend unto. The assembly cannot see how they, that have rights to land, can, without collusion and deceit to him and themselves, apply themselves for rights of land to the said lord Baltimore or his officers; that *all those, that transport themselves or others into this province, have a right to land by virtue of their transportation*; that every one may enter their rights of land in their several respective courts, and also may enter a *caveat* for such a particular tract of land as they have or shall take up.”

CHAPT.
VI.
1654.

Although this act does not expressly say, that the party, so taking up land “by virtue of his transportation,” should have and enjoy an estate in fee simple in his land, as fully and absolutely as if a patent from his lordship had been granted for the same, (as a subsequent act of assembly did, on a similar occasion,*) yet it seems evident, that the provision for the entry of a *caveat*, (which must have been to prevent any other person from taking up the same land,) would have an operation similar to the more express words of the subsequent act. Although the oath of fidelity, by a subsequent agreement, in behalf of lord Baltimore, in March 1657–8, was not to be pressed in future upon the residents of the province, and instead thereof a certain *engagement*, as therein prescribed, was to be taken by those who would obtain grants of their lands, as will presently be seen, yet the notice of this act herein may be of use, in accounting for the want of a patent for such lands as may have been taken up in the intermediate space of time.

The other act of this session, just referred to, relates to the same subject, but seems to be in the nature of a *declaration* against the proclamation of governor Stone, of the 7th of February, 1653–4, herein before stated.†

“Whereas by a proclamation, published and recorded in this province, by special order and command from the lord Baltimore, all the inhabitants, that will not within three months take that oath, which is imposed by his lordship, requiring them to acknowledge him to be *an absolute lord* of this province, and to

* When the government of the province, soon after the English revolution, was taken out of the hands of lord Baltimore, in 1692, in resentment thereof he shut up his land office, and would grant no patents. To remedy this, the assembly of that year passed the act entitled, “an act for securing the rights of several persons;” by virtue of which those, who had obtained warrants which were executed, were to enjoy them in fee simple without a patent. See the act at large in Bacon’s Collection of the laws, 1692, ch. VIII.

† See before, in this chapter, p. 473.

CHAPT. VI. have royal jurisdiction here, shall have their lands seized to his said lordship's use; and whereas likewise the said lord Baltimore hath declared such as have not or shall not comply with his government to be rebels, which also is upon record; this assembly doth declare, that the said proclamation and declaration aforesaid made by the said lord Baltimore and recorded, is null and void, and of none effect to such intents and actions as are mentioned therein; and that act of recognition confirmed by the assembly and expressed in the act is firm against all or any such declaration."

After this declaration, the assembly appear to have concluded their busy session with the following "order," which does them much honour, as indicating, that, although they were bereft of gratitude, yet they had not abandoned all sense of justice.

"Order, that no suits commenced before the reduction of this province to the obedience of the commonwealth, shall receive damage by such alteration."

The cancelling of debts has sometimes operated as a spur to the zeal of revolutionists. Many of the leaders of even the American revolution have been accused, not without some plausible grounds of having been under the influence of such a motive. Our Puritan revolution in Maryland, however, seems to have been clear of any such foul stain.*

1655. Our provincial records do not afford us any further information of the affairs of the province during the remainder of the year 1654, and it is expressly stated by a cotemporary author, that "after this assembly," (to wit, of October, 1654,) "the province was quiet, and so continued until the latter end of *January*; about which time, the ship *Golden Fortune*, whereof captain *Tilman* was commander, arrived in Maryland."† By this ship, captain Stone received, (through the information of a gentleman of the name of *Eltonhead*, who, as may be inferred from concomitant circumstances, came as a passenger in the same ship, and was probably sent into the country by lord Baltimore,) intelligence, "that the lord Baltimore kept his patent, and that his highness, (the lord proprietor) had neither taken the lord Baltimore's patent from him nor his land."‡

Governor Stone re-assumes his office and powers as governor.

* Such of the acts of this preceding session, as have been herein above stated, were taken from the book in the council chamber, entitled "Assembly Proceedings from 1637 to 1658," p. 439 to 474.

† Leonard Strong's pamphlet, entitled, "Babylon's Fall in Maryland," &c.

‡ Dr. Barber's letter inserted in *Langford's* "Refutation of Babylon's Fall, &c." and at the end of this volume in note (LXXXV.)

It would seem also, that a *letter* or written *instructions* came also by this ship to governor Stone from the lord Baltimore himself. But, as they are not now extant, their contents cannot be here stated with certainty. It appears, however, that the "letter" alluded to by the agents of Virginia, (Bennett and Matthews,) in the state-paper, presented to them by the lord protector in 1656, entitled, "A *breviat* of the proceedings of the lord Baltimore and his officers, &c., in Maryland," &c., was most probably now received by captain Stone. In this paper, it is stated, that—"The lord Baltimore in his last *letter* to captain Stone doth blame him for resigning up his government into the hands of the lord protector and commonwealth of England, without striking one stroke;" (alluding evidently to the resignation of the government of the province by captain Stone in July last,) "taxing him in effect with cowardice, that having so many men in arms, he would not oppose, saying, that Bennett and Clayborne durst as well have been hanged, as have opposed; or to that effect."* In either "paper relating to Maryland," of the same year, these agents seem to refer more expressly to some *instructions*, now received by captain Stone from lord Baltimore, as the operating inducements with the former to make some endeavours to recover back the proprietary government. They say,—“Concerning the late insurrection and blood spilt on the 25th of March, 1655, it appears, and *hath been proved*, that captain Stone being reprov'd by the lord Baltimore for resigning without striking a stroke, having so many in arms, and the commission given to captain Barber to reduce the people to lord Baltimore, in case captain Stone would not, the said captain Stone was hereby stirred and induced to attempt the said insurrection and rebellion.”† Thus encouraged and instigated by the lord proprietary, as the case might have been, to attempt the recovery of the proprietary government, captain Stone now reassumed

* If lord Baltimore was a royalist at this time and a friend to the restoration of Charles the second, of which no evidence appears, he might have been induced to write in this tone to his governor of Maryland by the extraordinary hopes, which the cavaliers or true friends of Charles entertained soon after Cromwell's usurpation of the protectorate, from the uncommon enmity, which that usurpation apparently excited among all the parties against Cromwell. Hence, the "rising" in the west of England by the unfortunate colonel Penruddock and others in 1655. So lord Baltimore might have supposed, that now also was the time for him to regain his government of the province.

† See these two papers, in note (LXXXVIII) at the end of this volume.

CHAPT. VI. his office of governor, acting as is said, "under his former commission."^a

1655.
Organizes
a military
force.

In virtue of his official authority, governor Stone proceeded to issue military commissions to officers, and to organize an armed force in the county of St. Mary's, for the purpose of taking possession of the government. Of these he dispatched a party to the house of Mr. Richard Preston, situated on or near the river Patuxent, where the provincial records had been deposited on the revolution in July last, as before stated, and caused them to be seized and brought to St. Mary's.† On the information of this seizure of the records, arriving at Providence, (now Annapolis,) captain Fuller and his council, in whom the government of the province had been vested, as before stated, sent two messengers with letters to captain Stone, "in a way of peace and love," desiring him to make it known by what power he surprised the records, and desiring an answer thereto. Captain Stone, it seems, thought it proper to return only a verbal answer, to wit, that "he would shew no power; but, he affirmed,

* Dr. Barber's letter, in note (LXXXV.) at the end of this volume.

† The above statement seems to be the *substance* of what is said on this subject by Mr. Leonard Strong, in his *Babylon's Fall*, &c. But, although his pamphlet is evidently the ebullition of strong party prejudice, yet the reader's curiosity may perhaps receive some gratification by the writer's own words. "Then (that is, on the arrival of the news by the *Golden Fortune*,) the lord Baltimore's officers, and the *popish* party began to divulge abroad, and boast much of power, which came in that ship from his highness the lord protector, to confirm the lord Baltimore's patent to him, and to re-establish his officers in their former places under him; which pretended power they assumed to themselves; captain Stone and the rest giving out threatening speeches, That now the rebels at *Patuxent* and *Severne* should know that he was governor again; giving order, That neither act of the said assembly should be observed, nor writ from the power established by the commissioners aforesaid obeyed,"—(to wit, writs in the name of captain Fuller and others, to whom Bennett and Clayborne had committed the powers of government, as before cited,) "but what should issue forth in the name of the lord proprietary, viz. lord Baltimore. And further, the said captain Stone gave several commissions to the *papists* and other desperate and bloody fellows, to muster and raise men in arms to be ready upon all occasions, giving out that he would go to Patuxent and seize the records of the province at the place where they were appointed to be kept by an act of the assembly, and to apprehend Mr. *Richard Preston* also, at whose house they were; which shortly was effected by virtue of a warrant in captain *Stone's* name, without proclaiming or shewing any power by which he acted such high robberies. But in threatening speeches declared, that they would have the government; and for the terror of others, would hang some of the commissioners, which were entrusted with the government by the commissioners of the commonwealth of *England*, under his highness the lord protector, namely captain *William Fuller*, Mr. *Richard Preston*, and Mr. *William Durand*."

that he acted by a power from lord Baltimore; and that the lord protector had confirmed the lord Baltimore's power." The messengers were thereupon dismissed and went home.* Soon after this, governor Stone issued a proclamation, for the purpose, as it would appear, of quieting the minds of the people of Patuxent, on his reassuming the government of the province, and his seizure of the records, protesting therein, that it was not his intention to use any hostile proceedings either against them or the people at Providence.† As Mr. Preston's house on the Patuxent had been used, since July last, as the seat of government for the province, where the provincial records had been kept, a considerable quantity of *arms and ammunition*, as it appears, had been there also deposited. Governor Stone, as a further precautionary measure, thought it proper to secure these arms and ammunition, and accordingly sent an armed party of twenty men for that purpose, under the command of William Eltonhead and Josias Fendal. They seized upon such arms, &c., as they could find, not only in Preston's house,‡ but in others in the neighbourhood, which, it is stated, they searched; and brought the

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VI.
1655.

* The words of Mr. Strong, in his "Babylon's Fall," &c., may again be quoted:—"About this time," (that is, on the seizure of the records,) "captain William Fuller, Mr. William Durand, Mr. Leonard Strong," (the author himself,) "and Mr. Richard Ewen, to whom among others the government was committed, sent two messengers of quality and trust with letters to captain Stone, in a way of peace and love; desiring him to make it known by what power he surprised the records; and desiring him, the said captain Stone, to give an answer, as by the letter, relation thereunto being had, more at large appeareth: But the said captain Stone, instead of giving a satisfactory answer, imprisoned the messengers, and, in much wrath and fury, said he would shew no power: at last he affirmed, that he acted by a power from lord Baltimore; and that the lord protector had confirmed the lord Baltimore's power. If so, sir, said one of the messengers, if it be confirmed, let that appear, and it will satisfie. Confirmed, said captain Stone, I'll confirm it; and so sent them home." This wears very much the appearance of a prejudiced and coloured statement, and, therefore, has been followed above with caution. It is probable, that the messengers were put under some restraint, and prevented from mixing with the people of St. Mary's, and from prying into the proceedings of the proprietary government, and for that purpose might have been put under confinement for the time they staid at St. Mary's. The letter from captain Fuller and his council to governor Stone, above referred to, does not appear to be now extant.

† This proclamation does not appear to be now extant, but is so stated as above by Mr. Strong.

‡ Mr. Strong's words are,—“They beset and entered the house of Mr. Richard Preston, with intent to surprise him; but not finding him at home, took away in guns, swords, and ammunition to the value of £30 sterling; ransacked every place in and about the house, to seek for the said Richard Preston; and, as some of the company then said, with purpose to hang him for his rebellion against the lord Baltimore.”

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1655. same to St. Mary's, carrying with them Mr. John Sutton, who had been appointed deputy clerk, "to attend the records, for any that should have occasion to use them, either for search or copy;" as also lieutenant Peter Johnson. These were detained prisoners, as is alleged, for about twenty days.

And
marches
towards
the Severn.

Soon after these transactions, governor Stone began to make preparations for reducing the Puritans of Ann Arundel to a submission and obedience to lord Baltimore's government. Having collected together and armed about two hundred of the yeomanry of St. Mary's county, who were willing to follow him, he sat out with this his little army, about the twentieth of March, 1654, O. S., towards Providence, now Ann Arundel. He had collected also about eleven or twelve vessels, probably such as are now called *bay-craft*, for the transportation of some of his forces, part of them marching along the bay coast, and the vessels serving to ferry them across the mouths of the rivers.

Before they had arrived at Herring creek, (sometimes called Herring bay,) in Ann Arundel county, they were met by messengers in a boat, who had been sent by the government at Providence with a letter to captain Stone, remonstrating against his proceedings, and desiring to be informed, not only of his authority and power in so doing, but whether "he were resolved to come to no parley or treaty, protesting in the said writing, that by the help of God, they were resolved to commit themselves into the hand of God, and rather die like men, than live like slaves."* No answer to this message appears to have been given by governor Stone; as may be inferred from the circumstance, stated by the same author, that "these messengers were apprehended, and their boat seized;" but three, out of the six persons on board the boat, contrived to make their escape, and carried back to the government at Providence the intelligence, that captain Stone and his army were on their march towards them in hostile array. On the arrival of governor Stone and his army at *Herring creek*, they found there, it seems, one of the commissioners, to whom the government had been entrusted in July last by Bennett and Clayborne. This gentleman they caused to be kept under guard or in custody;† and either at this

* Strong's "Babylon's Fall," &c.

†Mr. Strong's account on this occasion is, as follows:—"Captain Stone and his company still drew nearer to Providence, unto a place called Herring creek, where they apprehended one of the commissioners, and forced another *man of quality* to flee for his life, having threatened to hang him up at his own door;

place or at a little further on his march, governor Stone deputed doctor *Luke Barber* and Mr. Coursey, to go on before them to Providence with a *proclamation*, (or *declaration*, as doctor Barber calls it,) addressed to the people of Ann Arundel. It may be proper here to premise, that this gentleman—doctor *Barber* appears to be the same person alluded to in the “paper relating to Maryland,” just before stated, under the denomination of captain Barber, who is said to have had “a commission to reduce the people to the lord Baltimore, in case captain Stone would not.” No mention of such a commission, in his letter to the lord protector, is made by him, and the fact, therefore, seems questionable. He appears, however, to have been a zealous friend of lord Baltimore, and had arrived in Maryland about the twentieth of March, 1654–5, when the governor, captain Stone, as he says, was “ready to march with his army.” From his own statement, it appears, that he was induced to accompany the governor on his march, only on the particular request of the latter, and, therefore, being a *neutral* person, and in the confidence of the lord protector, he was the more fit to be sent as a peace maker between the contending parties. Of the contents of the proclamation, thus sent by doctor Barber, we are uninformed, it not being now extant; except so much of it as is stated by doctor Barber, in his letter to the lord protector, wherein he says, that “in the end of this *declaration* the governor did protest, as in the presence of Almighty God, that he came not in a hostile way to do them any hurt, but sought all meanes possible to reclaime them by faire meanes; and to my knowledge,” (doctor Barber adds,) “at the sending out of parties, (as occasion served,) he gave strict command, that if they met any of the *Ann Arundel* men, they should not fire the first gun, nor upon paine of death plunder any: these were his actings to my knowledge upon the march.” The “declaration,” however, does

and, not finding the man, affrighted his wife, and plundered the house of ammunition and provision, threatening still what they would do to the people at *Providence*, and that they would force the rebellious factious *Roundheads* to submit; and then they would shew their power.” The “commissioner,” here alluded to, whom they found at Herring bay, must have been one of those, whose names have been herein before stated, (p. 505,) composing captain Fuller’s council. It is possible, that this “commissioner” might have been at Herring bay on a visit to the “man of quality” mentioned, whom we may suppose to have resided there; both of them, as we may infer, being hostile to governor Stone and his proceedings, and the “commissioner” sent forward by captain Fuller to explore and make report of governor Stone’s advance.

CHAPT. VI. not appear to have had any salutary effect ; for, according to the
 1655. cotemporary author, before cited, who was probably present at the transaction,* the two gentlemen messengers, (doctor Barber and Mr. Coursey,) were permitted to *read* the “declaration,” (or proclamation,) “but having no other treaty to offer, they were quietly dismissed to their own company, to whom they might have gone if they would.” It seems, however, that they did not return to governor Stone, and his army ; nor did another messenger, (Mr. Packer,) dispatched by governor Stone, on the next day after the others, upon a similar errand as we may suppose.† It is possible, that the rapid advance of the army to the harbour of Providence might have precluded the necessity of it; for, on the evening of the same day, on which the last messenger arrived, “captain Stone and his army appeared in the river of *Severn* at Providence, with eleven or twelve vessels greater and lesser, in which their whole army were wafted.”‡ On the appearance of this fleet and army, captain Fuller called a council of war ; at which Mr. William Durand, the secretary of the Puritan government at Providence, was appointed to go on board a merchant ship, called the *Golden Lyon*, then lying at anchor in the river, of which one *Heamans* was master. Mr. Durand was directed to affix a proclamation on the main mast of the said ship, directed to captain *Heamans*, commander thereof; in which proclamation, “he, (the said *Heamans*,) was *required*, in the name of the lord protector and commonwealth of England, and for the maintenance of the just libertyes, lives, and estates of the free subjects thereof, against an unjust power, to be aiding and assisting in this service.” On this statement our cotemporary author§ remarks :—“The said captain *Heamans* at first was unwilling ; but afterwards seeing the equity of the cause and the groundless proceedings of the enemy, he offered himself, ship, and men for that service, to be directed by the said William Durand.”

When we advert to other information relative to the conduct of captain *Heamans*, we cannot but be struck with the strong probability, that all this proceeding of deputing Mr. Durand to go on board the *Golden Lyon*, and the fixing a proclamation on

* Leonard Strong, in his “*Babylon’s Fall*,” &c.—Mr. Strong was then one of captain Fuller’s council.

† Mrs. Stone’s letter, hereafter referred to.

‡ Leonard Strong’s “*Babylon’s Fall*,” &c.

§ Leonard Strong, *ibid*.

the main mast thereof, for the purpose before expressed, was a mere pretext, before concerted between captain Heamans and the Puritans, to gloss over his interference, and to make it appear as if he had been *impressed* into the Puritan service. Doctor Barber, in his letter to the lord protector, expressly states, that "*Heamans*, commander of the Golden Lyon, was *hired* by them," (that is, by the Puritan government at Providence,) "having since received his reward of them;" and Mrs. Stone also, in her letter to lord Baltimore, states, that "they were better provided than her husband expected; for, they *hired* the captain of the Golden Lyon, a great ship of burden; the captain's name is Roger Heamans, a young man, and his brother, who have been great sticklers in the business, as I hear."* Mr. Heamans, therefore, must have been a *volunteer* in the contest, and was probably a zealous Puritan.

Governor Stone, with his little fleet and army, had, by this time, about "the shutting in of the evening," as it is said, on the 24th of March, (O. S.) arrived within the outer harbour of Providence, now Annapolis. He was now also within the range of the shot of the Golden Lyon; from whence a gun was fired at him, in order, as is said, to bring him or some messenger on board. Governor Stone did not think it proper to pay any attention to this signal of war, as it appeared; but, having arrived within the mouth of the creek, which forms the southern boundary of the peninsula on which the city of Annapolis now stands, proceeded to land his men on a peninsula or point of land, which lies on the southern side of both the river Severn and the before mentioned creek, nearly opposite to and in an eastern direction from what is called the *dock* or inner harbour of Annapolis, and on which point or peninsula a small fortress, called fort *Horn*, was afterwards built during the American revolutionary war. While governor Stone was landing his men on this point of land or peninsula, the commander Heamans, or Mr. Durand, thought it proper to repeat their fire upon the boats of governor Stone as they were rowing to the shore. The shot thereof lighting somewhat near to them, the governor deemed it most prudent to send a messenger on board the Golden Lyon to know the reason of their conduct, with directions to the messenger to inform the captain of the ship, that he (governor Stone) thought "the captain of the ship *had been satisfied*." To which the captain "an-

* Mrs. Stone's letter, in note (LXXXV.) at the end of this volume.

CHAPT. swered," (in a very blustering tone, as it appears,) "satisfied
 VI. with what? —I never saw any power captain Stone had, to do as
 1655. he hath done; but the superscription of a letter. I must, and
 will appear for these in a good cause."*

The battle
 on the
 Severn.

Governor Stone having moved his vessels further up the before mentioned creek during the night, captain Heamans, or the Puritans on shore, contrived, early in the next morning, to place a vessel or vessels, "with two pieces of ordnance," at the mouth of the creek, and by that means blockaded governor Stone's little fleet within the same, so as to prevent them from coming out. The governor soon after, however, on the same day, (being *Sunday*, the 25th of March, 1654–5, O. S.) appeared with his small army, in military parade, on a narrow neck of land, (most probably that, on which the remains of the before mentioned *fort* now are,) near where he had landed. The captain of the ship, (Heamans,) observing this, brought his guns to bear upon them, and firing at them, *killed one man*, and by that means forced them to march further off into the neck of land.† In the mean time captain Fuller, the Puritan commander, with his army consisting of a hundred and twenty men, embarked on board of their boats, most probably from the peninsula whereon Annapolis now stands, and went up the river some distance, where they landed and marched round the head of the creek to where captain

* This is so stated by Mr. Leonard Strong, (in his "Babylon's Fall," &c.) who most probably was in Annapolis at the time. But he has no where, in his pamphlet, previously mentioned any prior eclairsissement or explanation, which might have taken place between governor Stone and the captain, after the arrival of the former with his fleet within the Severn, to which the "satisfaction" mentioned seems to allude. Nor does doctor Barber or Mrs. Stone, in either of their letters, hint at any such previous *explanation*. It is probable, however, from the above, as stated by Mr. Strong, that governor Stone and captain Heamans had some *explanation* with each other previous to the firing on the boats, and that governor Stone had exhibited to him some letter or instructions, which he had lately received from lord Baltimore.

† Mr. Strong's words are:—"The same day, being the first day of the week, and the 25th of March, the enemy appeared in a body upon a narrow neck of the land, near their vessels, and with drums and shoutings said, *come, ye rogues, come, ye rogues, round headed dogs*; which caused the captain of the ship to give fire at them, and forced them to march further off, into the neck of land." Doctor Barber, however, states, that, "in firing upon them *in the next morning*, as he was credibly informed, they killed one of the governor's men, and *so began the war*, which after fell out." Mrs Stone also, in her letter to lord Baltimore from St. Mary's, states as follows:—"The gunner's mate of *Heamans*, since his coming down from Ann Arundel to Patuxent, hath boasted that *he* shot the first man that was shot of our party." It was, therefore, most probable, that at the firing from the ship *in the morning*, as just stated by Mr. Strong, *the first man was killed* of either side.

Stone and his people were waiting to receive them, a distance of six miles, as is stated by our author. On the approach of the Puritan army, the sentry of the people of St. Mary's, or *Marylanders*, as our author calls them, fired his alarm gun, when the *Marylanders* immediately appeared in order. As we have no other authority for the minutiae of this battle, than the account of it given by the author just quoted,* which cannot be conveniently condensed into a smaller compass and is probably true in substance, when stripped of its partial colouring, it is thought best here to follow his precise words. "Captain *Fuller* still expecting, that then at last, possibly they" (meaning captain Stone and his *Marylanders*,) "might give a reason of their coming, commanded his men upon pain of death not to shoot a gun, or give the first onset: setting up the standard of the commonwealth of England, against which the enemy shot five or six guns, and killed one man in the front before a shot was made by the other.† Then the word was given, *in the name of God fall on; God is our strength*,—that was the word for *Providence*: the *Marylanders'* word was,—*Hey for Saint Maries*. The charge was fierce and sharp for the time; but through the glorious presence of the Lord of hosts manifested in and towards his poor oppressed people, the enemy could not endure, but gave back; and were so effectually charged home, that they were all routed, turned their backs, threw down their arms, and begged mercy. After the first volley of shot, a small company of the enemy, from behind a great tree fallen, galled us, and wounded divers of our men, but were soon beaten off. Of the whole company of the *Marylanders* there escaped only four or five, who run away out of the army to carry news to their confederates. Captain *Stone*, colonel *Price*, captain *Gerrard*, captain *Lewis*, captain *Kendall*,‡ captain *Guither*, major *Chandler*, and all the rest of the councilors, officers, and souldiers of the lord Baltimore, among whom, both commanders and souldiers, a great number being *Papists*, were taken, and so were all their vessels, arms, ammunition, provision; *about fifty men slain and wounded*.§ We lost only two

* Mr. Leonard Strong, in his "Babylon's Fall," &c.; who might possibly have been in the battle, he being then one of captain Fuller's council.

† The man killed, it seems, was William Ayres, the ensign bearer. See the papers in note (LXXXVIII.) at the end of this volume.

‡ This is so written in the MS. but it is probable, that it was meant for captain *Josias Fendall*, so conspicuous in the province soon after.

§ Among the killed in battle, of those of governor Stone's party, Mr. *Thomas Hatton*, the late secretary of the province appears to have been one.

CHAPT. in the field ; but two died since of their wounds. God did ap-
 VI. pear wonderful in the field, and in the hearts of the people ; all
 1655. confessing him to be the only worker of this victory and deliver-
 ance." The author seems to lay some stress upon the circum-
 stance of the firing upon the colours of the commonwealth, and
 killing the *first* man before a shot was fired by the other. But,
 if men will fight under colours, which they are not authorised to
 use, as is often the case of pirates, their opponents are not bound
 to respect such colours or standard ; and, as it will herein after
 appear, that the assumption of power by the Puritans of Mary-
 land, in July, 1654, was never recognized by the lord protector
 of England, the representative of that commonwealth, it seems
 to follow, that the erection of the standard of the commonwealth
 was without any lawful authority, and governor Stone, therefore,
 not bound to respect it. If any importance can be attached to
 the fact of *killing the first man*, after the hostile proceedings of
 the two parties practised towards each other for some time before,
 it is evident, from the concurring testimony of doctor Barber
 and Mrs. Stone, before stated, that *the killing the first man* was
 by the fire from the ship in the morning before the battle began ;
 which was, according to the opinion of doctor Barber,—*the be-
 ginning of the war.*

Our partial author, just cited, whom we have been under a ne-
 cessity of following, through want of other information, has
 thought it proper to conclude his pamphlet with the account of
 the battle, as just quoted ; except in the subjoining of a "post-
 script" to it, which contains nothing more than a nonsensical
 rhapsody of praise and glory to the Lord "for this his highest
 deliverance to his people, and destruction to Babylon." He has
 omitted an important catastrophe of the tragedy ; of which
 omission his opponent* has not failed to take notice ; that is,—
 "the putting to death of four of captain Stone's party by the
 people above mentioned, in cold blood, several days after the
 fight." This omission, however, is supplied by the statements
 of two other authorities. Doctor Barber says, that "after the
 skirmish, the governor, upon quarter given him and all his com-
 pany in the field, yielded to be taken prisoners ; but, two or
 three days after, the victors condemned ten to death, *and exe-
 cuted foure*, and had executed all, had not the incessant petition-
 ing and begging of some good women saved some, and the

* Mr. John Langford, in his "Refutation of Babylon's Fall," &c.

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VI.
1655.

souldiers others; the governor himselfe being condemned by them and since beg'd by the souldiers; some being saved just as they were leading out to execution." Mrs. Stone also, in her letter to lord Baltimore, states, that "after quarter given, they tried all your councellors by a councell of warre, and sentence was passed upon my husband to be shot to death, but was after saved by the enemy's owne souldiers, and so the rest of the councellors were saved by the petitions of the women, with some other friends which they found there." The four, who were shot to death, after trial by a court martial, were Mr. William Eltonhead, (probably the same Mr. Eltonhead, who had lately arrived from England, with intelligence to governor Stone, as before mentioned,) lieutenant William Lewis, Mr. Leggat, and a *German*, whose name is not mentioned, but who is stated to have lived with Mr. Eltonhead, probably as his servant. This transaction must strike every enlightened individual at this day as one of those atrocities, which the vindictive passions, incident to a civil war in any community, are too apt to produce. It is an universally acknowledged principle, that the captor in war, even in the case of *civil* commotions, has no right to put his captive to death, after surrender and quarter given. There is no necessity then to trouble the reader with a refutation of the artful apology offered by Messrs. Bennett and Matthews for this outrage upon the law of nature and nations, in their document entitled, "a paper relating to Maryland," presented by them, in the succeeding year, 1656, to the government of England.*

The unfortunate issue of governor Stone's expedition to Providence necessarily invested the Puritan party there with the full and complete powers of the government of the province. But, nevertheless each party became anxious to justify their respective conduct on the occasion in the sight of the supreme authority of the mother country—the lord protector. To this anxiety on the part of the Puritans, is attributed the detention of governor Stone and all those individuals, who had been his councillors by the commission of lord Baltimore, as prisoners of war for a much longer time after they had agreed to spare their lives, than perhaps they would otherwise have done. Thus detained as prisoners, they were prevented from writing or giving any intelligence of their conduct on the late unfortunate occasion to any

* See this document and the last clause thereof, in note (LXXXVIII.) at the end of this volume.

CHAPT. VI. of their friends or partizans in England; and governor Stone
 1655. was not allowed, it seems, to write even to his wife at St. Mary's without the restriction of having his letters perused. He had been wounded in the shoulder in the late conflict, but not dangerously; and on that account probably they gave leave to his wife to go up from St. Mary's to Providence to visit him. Before her departure from St. Mary's, however, she wrote to lord Baltimore in England the letter herein before frequently referred to, and which was subsequently in the present year published in England by Mr. Langford in his pamphlet entitled, "A refutation of Babylon's Fall," &c.

But a more important account of the late transactions within the province, and one that was likely to have more weight and influence with the supreme power of the commonwealth—the lord protector, was written by doctor Luke Barber, before mentioned. This gentleman, it seems, as stated in his letter, had been particularly well known by the lord protector himself, "not only in his army; but also as a *domestic servant*" to his highness. As he is termed a *doctor* in some of the records and documents relating to the province, it may be inferred, that he had been either a surgeon or physician in the lord protector's army and family, and might have come out to Maryland to better his fortunes in one of those capacities, though it seems probable, from other circumstances, that his embarkation for Maryland might have been the result of some prior concert with lord Baltimore for *political* purposes in the province. However this might have been, he seems to have been an uniform friend to lord Baltimore; and the favourable disposition, which evidently was afterwards entertained by the lord protector towards lord Baltimore and his proprietaryship in Maryland, was in all probability much owing to the personal influence of doctor Barber with the protector. He was detained, it seems, at Providence, by the Puritans, with the councillors of governor Stone, for some time, and supposing, that he should not have liberty to leave the country and return to England, as he intended, he wrote the letter to his highness the lord protector, herein before cited. But the Puritans, being perhaps informed of his high standing with Cromwell, did not detain him long, and he returned to England in the same ship in which he intended to have sent his letter, and there explained "by word of mouth to his

highnesse," as it is stated, the substance of what he had previously written.*

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VI.

The Puritans of Providence, having thus, by the defeat of governor Stone, secured to themselves the government of the whole province, proceeded, as is too generally the case with the victorious party in a revolution, to the forfeiture or at least the *sequestration* of all the property of those, whom they termed "delinquents;" meaning thereby governor Stone and all those, who had acted with him in the late conflict. To effectuate this purpose, captain Fuller and his council issued the following order.

1655.
The estates of the delinquents sequestered.

"Whereas the ordering, directing, and governing the affairs of Maryland, for the administering of justice, [and] conservation of the peace, is committed to us by the supreme authority of the commonwealth of England, &c:

"It is ordered, that captain John Smith do take what he may concerning the estates of delinquents, which are sequestered in Patuxent and Patowmack and St. Mary's; to take an inventory thereof, and use such prudential means to save indemnified the said estates, as he shall think fit, until further order come from the governor and council under his highness the lord protector."†

Our documents furnish us with no information as to the period of time, during which governor Stone and his companions were detained in custody at Providence. It is probable, that as soon as captain Fuller and his council had despatched their messengers to England, in order to forestall the accounts of their opponents and prepossess the minds of the government there in their favour, governor Stone and those prisoners, whose lives they had spared, were liberated, but with the mortification of being witnesses to the execution of the preceding order for a sequestration of their property.

* This is so stated by Mr. Langford in his "refutation of Babylon's Fall," &c. The letters of doctor Barber and Mrs. Stone are inserted at large in note LXXXV. at the end of this volume.

† "Council Proceedings from 1636 to 1657," p. 310. There is no date annexed to this document, in the record thereof; but, according to the order in which it stands on the record, it was issued prior to the 13th of August, 1655, and from what both doctor Barber and Mrs. Stone observe in their letters, as to sequestering the estates of governor Stone and the others, who had been condemned, the above order must have been issued subsequent to the battle of the 25th of the preceding month of March. Neither does it appear, whether those, who made this order, (most probably captain Fuller and his council,) made it in virtue of their powers as an *executive* or *judiciary* part of the government.

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VI.

1655.

Proceed-
ings in
England
relative
to these
provincial
disputes.

Notwithstanding the prosperous tide of fortune, which seemed now to attend the Puritans of Maryland in their expectations of retaining the powers conferred on them in July of the preceding year, by the commissioners—Bennett and Clayborne, yet, whether through the influence of doctor Barber or other friends, whose interference lord Baltimore had procured, it seems certain, that the lord protector was very far from gratifying the desires of lord Baltimore's opponents at this time to the utmost extent of their wishes. Indeed, it seems to be a point settled by historians, that Cromwell, soon after he had attained to his highest exaltation by being installed protector of the commonwealth, paid a greater degree of court, even to his old enemies, the Roman Catholics, than was agreeable to many of his former adherents. He knew, that the majority of this sect, especially those of Ireland, (and lord Baltimore was an *Irish* peer,) were not very zealously attached to a restoration of Charles the second; for, on his restoration protestantism would be still on the throne. He had also to encounter the secret enmity of the *political*, (or, as some called them, the *deistical*,) *republicans*, as well as some few of the religious fanatics. To counterbalance this, it was a policy embraced by him, to indicate a disposition towards a *general toleration* of all the different sects of religion then existing under his rule and government, except perhaps the Old Church of England, the members of which, he without doubt deemed to be incorrigible advocates for a restoration of the Stuart family.* He had written some "letters," or instructions, on the 12th of January, 1654–5, on the intercession, as it would appear, of lord Baltimore or some of his lordship's friends, in relation "to the proceedings of those commissioners, who were authorized to settle the civil government of Maryland;" which "letters," though it is not expressly so stated, yet appear to have been addressed to those same commissioners, who were Bennett and Clayborne, both then resident in Virginia. There had long existed some disputes between the government of Virginia and that of Maryland relative to the *bounds* of the two provinces; which disputes seem to have been confined at that

* This policy in Oliver's conduct at this time is mentioned by *Leland*, in his history of Ireland, (vol. iii. p. 399) as one of the grounds of the enmity towards him entertained by *Ludlow*, the inflexible republican; and according to *Rapin*, (Hist. Eng. Tindal's edit. vol. 11, p. 92,) Oliver considered the *republicans* at this time as his greatest enemies; and according to lord Clarendon, (p. 677,) he now courted the nobility and spoke favourably of the *order of bishop*.

time to the division line between the two provinces, on the eastern shore of the Chesapeake, separating the county of Accomack in Virginia from those of Worcester and Somerset in Maryland. These disputes arose, as has been herein before mentioned, from the supposed difficulty of ascertaining what point of land it was, which was alluded to in lord Baltimore's charter, under the denomination of *Watkin's Point*. It was with a view to this subject, that lord Baltimore gave instructions to his governors, a year or two back, as has been before stated, that endeavours should be used to cause the lands of his province bordering on that division line to be granted and settled as soon as possible, even at half the price of lands in the other parts of the province. The commissioners—Bennett and Clayborne seem to have artfully availed themselves of these differences about *bounds*, in order to cherish an animosity between the people of the two provinces; and, as appears from the several papers or documents drawn up by Bennett and Matthews, agents for Virginia in England, in the year 1656, they attempted to revive the old dormant claim of Virginia to the whole province of Maryland as being part of the original territories of that ancient dominion. Of the exact contents of these letters from the lord protector, “of the 12th of January last,” we are not informed, as they do not appear to be now in existence; (at least on the Maryland records;) but, as the lord protector himself has explained them in his subsequent order, of September 26th, 1655, “they were only to prevent and forbid any force or violence to be offered, by either of the plantations of Virginia or Maryland from one to the other *upon the differences concerning their bounds*, the said differences being then under the consideration of ourself and council here.” This letter of the lord protector, “of the 12th of January,” being considerably prior in date to the battle of the 25th of March, before stated, could have no relation to that subject. The occurrence of that unfortunate event animated both parties in Maryland to a speedy recurrence to the supreme power—the lord protector. The commissioners—Bennett and Clayborne, having received in the mean time the aforesaid letter of his highness, “of the 12th of January,” had mistaken, as it appears, the meaning thereof; supposing, that the lord protector “would have a stop put to their proceedings, not only as to the *bounds*, but also as to *settling the civil government* of Maryland.” It is possible, that the expression quoted

CHAPT. VI. by an eminent annalist from a letter written by the protector to these commissioners,—“commanding them, not to busy themselves about *religion*, but to settle the civil government,” was a part of this letter, “of the 12th of January.”* For the more full explanation of both these important subjects, as also, without doubt, to give an account of the late battle, with all its causes and consequences, the commissioners (Bennett and Clayborne) drew up a letter, or representation thereof, dated the 29th of June, to be presented to the lord protector, of which Bennett himself was to be the bearer, as well as general agent in England for the colony of Virginia. Mr. Bennett appears, therefore, about this time, (in June, 1655,) to have abdicated his office of governor of Virginia, and to have embarked for England for the aforesaid purposes. On his arrival in England, he had audience of his highness; when, without doubt, he “related” all about the late battle and contests in Maryland, as much in the favour of the Puritanic party there, as he could. His representation of the Maryland disputes does not appear, however, to have had so much effect with his highness, as might have been expected. This may be fairly inferred, not only from the tenor of his highness’s explanatory order, of the 26th of September, written perhaps soon after Mr. Bennett’s audience, but evidently from his (Cromwell’s) subsequent neglect and inattention to the whole of the Maryland contests; for, although the business came finally before him and his council, yet he never during his life made any decision upon the subject. It appears from a subsequent document, that, on the complaint of lord Baltimore to his highness the lord protector, against those people in Maryland, who were in opposition to the proprietary government, the protector referred these “controversies” to “the lords commissioners *Whitlocke* and *Widdrington*;† whose report thereof was afterwards referred by the councell to *the commissioners for trade*; who made their report also, dated the 16th of September, 1656, to his highness and councell; but they,” (his highness and council, “by reason of their great affaires, not having leisure to consider of the said report, the same re-

* No letter containing this quotation appears to be now remaining *among the records of Maryland*, as stated by Mr. Chalmers. See his *Annals*, p. 236.

† They were lords commissioners of the great *seal*. It appears, that ever since the revolution in 1648–9, the office of *chancellor* had been committed to commissioners, of whom Sir Thomas Widdrington, knight, and Bulstrode Whitlock, esqr., were two.

mained undetermined;" until an agreement took place between lord Baltimore and Bennett and Matthews, on the 30th of November, 1657, as will hereafter be more fully stated. It was during the pendency of some one of these references, that the protector wrote his order of the 26th of September, 1655, to the commissioners of Maryland, explanatory of his former letters or orders relative to the disputes between Maryland and Virginia.* Although Mr. Bennett appears to have been then, (September, 1655,) in England, acting as agent for Virginia and the Maryland Puritans, and the other commissioner of Maryland—Clayborne, was probably then in Virginia, yet, as the document wears more the appearance of an *order* than a familiar letter to these commissioners, there is no impropriety in supposing it to have been delivered by Mr. Secretary Thurloe to Mr. Bennett himself, personally attending at Whitehall for that purpose. It was to confirm the lord protector's orders, forbidding either of the colonies—Virginia or Maryland, to resort to force in order to settle their disputes about their *bounds*. Mr. Bennett being then agent for Virginia, as well as one of the commissioners for Maryland, the *order* might have been with propriety delivered to him. In further suppression of any resort to force by either of these two colonies in the settlement of their disputes, about either the civil government of Maryland or their respective bounds, the protector wrote another order or *letter*, as it is called, to the *governor of Virginia*, dated the 8th of October, 1655, in which, as is stated, "he declared his pleasure, that no obstructions be made to what had been acted concerning the civil government in Maryland by the commissioners of the late council of state in pursuance of their instructions."† After the late contest and battle, on the 25th of March, 1655, it was, perhaps, a proper determination in the protector to forbid the late officers of the proprietary government to make any insurrection or disturbance against the government of Maryland under captain Fuller and his council, who had been invested with their powers by the commissioners of the late council of state—Bennett and Clayborne. What was the rest of the contents of this letter from the protector to the governor of Vir-

* See this letter or order of "the protector to the commissioners of Maryland," at large in note (LXXXVI.) at the end of this volume.

† See the two documents—one entitled, "objections against lord Baltimore's patent," &c., and the other—"a paper relating to Maryland," in note LXXXVIII. at the end of this volume.

CHAPT. VI.
1655. ginia, the agents, Bennett and Matthews, do not inform us in the documents just referred to. The confusion of the times seems to have created a perfect blank in our historical materials, as to any subsequent transactions within the province during the remainder of the year 1655. The hopes and fears of both parties appear to have hung with anxious suspense upon the before mentioned references.*

Fendall
appointed
governor.

Among the most active partizans, under governor Stone, in support of the lord Baltimore's government and proprietaryship of the province, during the preceding contests, was captain Josias Fendall; a man, who had rendered his name conspicuous in our records for his subsequent transactions. He had commanded the military party sent by governor Stone to the Patuxent for the seizure of some arms and ammunition, as herein before stated; which he performed with a truly *cavalier* incivility, if not, as was alleged by the Puritans, with some severity and oppression. He was in the subsequent battle of the 26th of March, and, as it would seem, was among those, who had been taken prisoners. This manifestation of zeal on his part seems to have attracted the attention of the lord proprietary towards him. After a long pause in the affairs of Maryland ensuing on the preceding storm, the first incident relative thereto, afforded by our historical materials, is the grant of a commission by lord Baltimore to captain Josias Fendall, to be governor of Maryland, bearing date the tenth day of July, 1656. The tenure of his commission was,—“To have and to hold the same during our pleasure in as ample and large manner to all intents and purposes as was formerly granted by us unto captain William Stone our late lieutenant there.” In the body of same commission his lordship nominated and appointed five gentlemen, viz. “captain William Stone, Mr. Thomas Gerard, colonel John Price, Mr. Job Chandler, and Mr. Luke Barber, and such other person or persons not exceeding three in number, as the said Josias Fendall should nominate, to be of his lordship's counsell in the

* It may be proper to mention here, that some time in this last year, 1655, another pamphlet, besides those two herein before mentioned, was published in England, relative to the Provincial disputes in Maryland. It is entitled, in the *Bibliotheca Americana*,—“Strange Proceedings in Maryland, 4to London.” But, as we have not been so fortunate as to procure a copy of this work, we are uninformed as to its contents, or in which side of the disputes it was written. The rancour of the two parties against each other would easily enable either of them to denominate the conduct of their opponents. “Strange Proceedings.”

said province.*” What motives lord Baltimore had for substituting Fendall as governor of his province, instead of captain Stone, we are not informed. From the circumstance of nominating the latter first among the council, it might be inferred that it was done for no great displeasure entertained by his lordship towards governor Stone, but was dictated by some policy not easily now to be discovered. We are to hail this commission, however, as an earnest promulgation of the high hopes and expectations, which his lordship began now to entertain, that the ruling powers in England were not his enemies, and that, although he might not be completely restored to all his rights in Maryland, yet that his enemies, Bennett and Matthews, now labouring against him in England, were not likely to succeed in depriving him of his province. Whether Fendall was now in England with lord Baltimore, when this commission was granted to him, or had remained in Maryland and his lordship had dispatched the same to him, is not now to be ascertained. It seems certain, that he had now, during the summer of 1656, begun to put in practice some rebellious proceedings against the *Puritan* government of the province; and in this conduct, it seems, that he professed to act, as the record expresses it, “under a pretended power from captain William Stone.” From whence it may be inferred, that his movements in relation thereto were with the assent and approbation of governor Stone, and that his lordship, with the privity, and at the request, of the governor, had been induced to clothe him with the powers mentioned in the preceding commission. The *Puritan* rulers of the province appear, however, to have been too vigilant for Fendall. They had caused him to be arrested upon “suspicion” only, and he was brought before the provincial court to answer the charge exhibited against him, to wit, “of his dangerousness to the public peace;”—and upon this charge he was committed to prison. As the record of this transaction strongly develops the ideas of law and liberty prevalent in those times, especially with those who most affected a regard for them, it may be here inserted.

“At a provincial court holden the 13th of August, 1656:— Present, captain William Fuller, Mr. Edward Lloyd, Mr. Richard Wells, captain Richard Ewen, Mr. Thomas Marsh, and Mr. Thomas Meers. He is arrested and imprisoned by the Puritans.

* See this commission at large, in note (LXXXVII.) at the end of this volume.

CHAPT. VI. 1655. “Whereas Josias Fendall, gent., hath been charged, in the behalf of many of the commons, inhabitants of Maryland, by their declaration exhibited in court, that he the said Josias Fendall, contrary to his oath taken to the present government of the said province, hath openly acted to the disturbance of the public peace and government of the said province, for that end assuming a pretended power from captain William Stone, to the great hindrance of the public affairs, and to the distraction and damage of the people; to which charge the said Josias Fendall, having full and free liberty to answer, hath made no sufficient plea to traverse or make void the said charge, but rather disowning the power of the court; It is therefore ordered by this present court, that, in regard the said Josias Fendall hath and still doth give just ground of suspicion of his dangerousness to the public peace of this province, if he should enjoy his liberty, he the said Josias Fendall shall go to the place from whence he came a prisoner, and there abide in safe custody *until the matters of government in the province of Maryland shall be further settled and fully determined by his highness the lord protector of England and council of State* upon a legal hearing, to which also the said Josias Fendall doth consent in court.”

It appears, that on a subsequent day he was either brought or came himself, into the provincial court, and took an oath to the following purport:

“September, 24th, 1656.—Captain Josias Fendall hath this day in open court taken oath, in the presence of God and before the face of the whole court, he will neither directly nor indirectly be any disturber to this present government till there be a full determination ended in England of all matters relating to this government.”* We must suppose, that on the taking this oath he was discharged from his imprisonment, although it is not expressly so stated on the record. The *indefinite* period of his imprisonment, according to the foregoing commitment, to wit, “*until the matters of government in Maryland should be settled by the protector,*” (an event that never did take place,) might have impressed the court with the impropriety of such a commitment, especially when the law was, even then, that a commitment should be only until he should be discharged *by due course of law*. We shall see Mr. Fendall, however, again exercising

* These proceedings of the provincial court are taken from the record book in the council chamber, entitled, “Council Proceedings from 1636 to 1657,” p. 314.

his talents for rebellion and insurrection against even the go- CHAPT.
vernment, whose cause he now espoused. VI.

In the mean time, while these proceedings were had in Mary- 1656.
land against Fendall, the affairs of lord Baltimore in England, The go-
with respect to his proprietary rights in his province, were going vernment
on most prosperously. The lords commissioners Whitlocke and of England
Widdrington, to whom the business had been *first* referred by favourable
the protector, had, some considerable time before this, made their to lord Bal-
report upon it to Cromwell's council of state; but, for some timore.
reason not now to be ascertained, the council, by the direction of
Cromwell as we may suppose, caused the *report* of the said lords
commissioners to be again referred to certain persons, entitled,
"The Commissioners for Trade."* These last mentioned com-
missioners, ("for trade,") made and returned *their* report on the
subject "to his highness and council," on the 16th of Septem-
ber, 1656. Posterity have been unfortunate in respect to both
these reports. The former does not appear to be now extant;
at least, not on the records of Maryland. The latter was sent
into the province by lord Baltimore at the same time and toge-
ther with his *instructions* of the 23d of October, 1656, to his
lieutenant general of the province; which instructions were,
without doubt, predicated upon this last mentioned report of "the
commissioners for trade." A copy of this report, together with
the instructions, appears to have been regularly recorded in one
of the record books of the council chamber of the province, but,
through mischief, or carelessness, the first leaf of the book is
torn out, in which that report, together with a part of the in-
structions, had evidently been recorded.† This report of the
"commissioners of trade" must have been highly favourable to
lord Baltimore; inasmuch as it is stated to have been the basis
of the treaty or agreement, which subsequently in 1657 took
place between lord Baltimore and Bennett and Matthews, the
agents in England for the Puritans of Maryland as well as for
the colony of Virginia. It is highly probable, that this "com-
mittee for trade" thought, that the lord proprietary's government

* Whether these "Commissioners for Trade" were a committee formed out of the council of state, to whom all subjects relative to the *trade* of the commonwealth were referred, or whether certain persons, distinct from the council, formed a *board of trade*, erected by commission from Cromwell himself, does not clearly appear.

† In the book entitled "Council HH. 1656 to 1668," still remaining in the council chamber; but the greatest part of the first leaf thereof has been torn out, and some of the other leaves much defaced, so as not to be entirely legible.

CHAPT. VI. of the province, according to his patent for the same, was not incompatible with the then form of government in the mother country, and that, as his lordship had been at great expense in the settlement of his province, which expense could not as yet have been reimbursed to him, there would have been great injustice in depriving him of his profits and emoluments therein. They therefore awarded, that his lordship should be restored to his government of the province, under certain restrictions as to the enacting of laws affecting religious liberty. If such was the substance of the report of the "commissioners for trade," of the 16th of September, as we may fairly infer from the subsequent agreement mentioned to be founded thereon, it must now have afforded matter of high triumph to lord Baltimore, as also to his friends in Maryland, when they came to be informed thereof. A petition, it seems, had been sent from Virginia, probably from the assembly thereof, after their "reducement," and presented to the government of England, relative not only to the *bounds* between the two provinces, but also to their claim of the whole province of Maryland as "belonging to Virginia."* Among other circumstances attending this report, mortifying to the agents—Bennett and Matthews, one was, (of which they grievously complained,) that "nothing was either said or done by the commissioners concerning the Virginia petition, which related very materially to the business of Maryland, especially in that particular of the *bounds* by them claimed." It is probable, that, as to the subject of the *bounds* of the two provinces, Cromwell claimed the settlement thereof, as of his own special prerogative, "to himself and council," as he expressed himself in his order of the 26th of September, 1655, before mentioned, and had referred only the *disputes*, "that had happened between the men of Severn and lord Baltimore's officers," to the commissioners for trade. This supposition is not inconsistent with or repugnant to the orders, which are said to have been previously given by Cromwell to the governor and council of Virginia,— "not to meddle in the business that hath happened between the

* That this claim had been made by Virginia, is evident from what is mentioned of "the Virginia petition," in the joint letter of Bennett and Matthews to secretary Thurloe, dated October 10th, 1656, herein after stated; particularly from the expression therein,— "in case it belong not to Virginia;" and from a variety of passages in those "Papers" drawn up by Bennett and Matthews in the year 1656, as they appear in Hazard's Collections, vol. i. pp. 621,—630, taken from *Thurloe's State Papers*.

men of Severn and lord Baltimore's officers,"—(meaning without doubt the late battle of the 25th of March, 1655,)—"but to leave that affair to be settled by the commissioners of the parliament;"—for although this prohibitory order *to the governor and council of Virginia* amounted to a *recognition* by the protector of what had been previously done by Bennett and Clayborne, as "commissioners of the parliament," in their "reducement" of Maryland in 1654, yet it is evident, that this "business between the men of Severn and lord Baltimore's officers," to wit, the resort to force and battle in 1655, was subsequently referred to the "commissioners for trade." Not having cognizance of the dispute between the two provinces as to their *bounds*, these commissioners could else have had nothing to determine, if they had not the disputes "between the men of Severn and lord Baltimore's officers" to settle; which disputes related to the civil government of the province. This order of Cromwell to *the governor and council of Virginia* is so stated by an eminent annalist,* without mentioning any date to it. It is probable, that it was issued by Cromwell soon after he had received intelligence of the battle in Maryland of the 25th of March, 1655, perhaps about midsummer of that year. The commissioners of parliament, therein mentioned, must have been Bennett and Clayborne; who had acted in the "reducement" both of Virginia and Maryland, in 1652 and 1654, as commissioners under the council of state appointed by the old long parliament, and in common parlance appear to have been spoken of as commissioners of the parliament, and are mentioned under that denomination in the articles of the surrender of Virginia, of March 12th, 1651–2. But this subsequent recognition of what had been done by Bennett and Clayborne in the reducement of Maryland in 1654, by no means proves, that in so doing they were then authorised *by the lord protector*, as they then alleged, to settle the government of Maryland. A recognition of the validity of a transaction when done is different from an original power or authority for so doing. And the lord protector might have, subsequently to this *recognition*, with great propriety thought, that the settlement of the civil government of a province was too much to be entrusted to such men as Bennett and Clayborne; the latter of whom was evidently too much *interested* as to property, which he claimed in Maryland, to be a fit person on such an occasion, and the

* Chalmers's Annals, p. 224.

CHAPT. VI. 1656. former was most probably an illiterate fanatic, who busied himself too much about religion, as may be inferred from the protector's *reproof* to him before mentioned.* It may be further remarked, that this order of prohibition to the governor and council of Virginia must have indicated to them strong symptoms, that the ancient dominion was not to recover its supposed lost territory of Maryland; and seems to have been regarded by the *assembly* of Virginia, which sat in October, 1656, with all that respect and attention, which the orders of Oliver generally inspired. This assembly must have supposed, that their agents—Bennett and Matthews, then in England, were insufficient to support their sinking cause with the protector and his council, for, at this session, on the fifteenth of October, 1656, they came to the resolution of sending another agent to England, and accordingly appointed Mr. Edward Digges, who was then the governor of Virginia,—“a worthy person,” as they say in their letter of credence to his highness,—“whose occasions calling him into England, we have instructed him with the state of this place as he left it.” A part of the “instructions,” now drawn up for Mr. Digges by the assembly, was, that “he was to assure his highness, that, according to his letter, they had not interested themselves in the business betwixt Maryland——† and have been unconcerned in their quarrel from the beginning until this time, and so shall continue according to his highness's direction in that letter.”‡

* Chalmers, (in his *Annals*, p. 224,) remarks,—that “the deputies of the protector in Maryland,”—(meaning Bennett and Clayborne,) “seem neither to have been men of much political knowledge, nor extremely attentive to the punctualities of duty; and the protector had expressly “commanded” them, as he states in another place, “not to busy themselves about religion.

† This blank appears to have been so in the record; and seems to have meant “betwixt Maryland” and the Puritans there settled.

‡ The letters of the assembly to his highness and Mr. Secretary Thurloe, as also the “instructions” to Mr. Digges, are given at large by *Burk*, in his *Hist. of Virginia*, (vol. ii. p. 116,) and therein expressed as—“Dated from the assembly of Virginia, 15th *December*, 1656.” But, it is remarkable, that one of these same documents, to wit, the letter to secretary Thurloe, is published also in *Hazard's Collections*, (vol. i. p. 632,) apparently with more accuracy; wherein it is thus dated, “The assembly of Virginia, 15th *October*, 1656.” The copy in *Hazard's Collections* purports to have been taken from “Thurloe's State Papers, vol. v. p. 497, A. D. 1656.” That in *Burk's Hist.* was most probably taken from the records of Virginia. One of the dates must be erroneous. It is probable, that the letter to Mr. *Thurloe* himself, and published by him, is the more accurate one. The *History of Virginia* by *Burk*, is full of such blunders, and betrays the *national* foible of that historian. He seems to have been too much enamoured with his own supposed talents for fine writing, to have attended to *dates*; and

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VI.

1656.

The agents
Bennett
and Mat-
thews, per-
severe in
opposition
to his lord-
ship.

The report of the commissioners for trade, however favourable to lord Baltimore, was nevertheless not yet ratified by Cromwell and his council, and therefore not obligatory upon the opposite party. We see them, consequently, still labouring with indefatigable zeal against a restoration of lord Baltimore to his proprietary rights. On the tenth of October, within less than a month after the date of the report, we find the agents—Messrs. Bennett and Matthews, then in England, continuing their inveterate opposition to lord Baltimore, by drawing up a paper entitled, “Objections against lord Baltimore’s patent, and reasons why the government of Maryland should not be put in his hands;”—which they enclosed in a letter to Mr. Secretary Thurloe, to be presented by him to his highness the protector. After making the old stale objection to the lord proprietary’s patent, on account of Clayborne’s prior settlement of the isle of Kent, they proceed to a variety of other objections and reasons, herein before frequently remarked upon, the substance and burthen of which seem to have been, that, if lord Baltimore was restored to his proprietary government, “Papists would bear rule over the free born subjects of the English nation.” This paper contest, before the protector and his council, seems to have been carried on by the agents for some considerable time during the remainder of the year 1656, possibly with reciprocal answers on the part of lord Baltimore, of which last, however, we have no record or copies. The documents, on the part of the agents, seem to have been preserved by Mr. Secretary Thurloe, and published with his Collection of State Papers:—particularly two others, one entitled, “A paper relating to Maryland,” and the other, “A *breviat* of the proceedings of the lord Baltimore and his officers and compliers in Maryland against the authority of the parliament of the commonwealth of England, and against his highness the lord protector’s authority, laws, and government.” As every event referred to, and every objection raised by the agents in these documents, have been herein before largely commented upon, it is unnecessary to repeat any further remarks on them.* After the agents had said perhaps all they

when he gets upon the subject of *republicanism*, which is as often as he can conveniently, and particularly on the proceedings of this assembly, it seems to affect him as chivalry did Don Quixot.

* As these documents form so prominent a groundwork for the history of Maryland for many years previous to this period of time, it is proper that the reader should have the perusal of them at large. See them in note (LXXXVIII.) at the end of this volume.

CHAPT. VI. could say upon the subject, in their written documents presented to the protector and his council, the contest appears to have remained in a state of suspension, unsettled, and undetermined. Much "greater affairs" occupying the attention of his highness and his council, they had no "leisure" to attend to the petty proceedings of a distant colony.*

Lord Baltimore sends instructions to his governor.

Lord Baltimore, however, appears to have been too sensible of the advantages, which the report of the commissioners for trade gave to his cause, to wait for the final decision of the protector and his council. As before observed, it is probable that he had some previous intimation given him of the disposition of the commissioners for trade in his favor, when he sent his commission, of the tenth of July, to Josias Fendall, to be governor of his province. On the return of their report to the protector and council, on the 16th of September, he became so much more emboldened by their decision, as to enter upon preparatory proceedings for the recovery and possession of his province. He appears, accordingly, to have drawn up his "instructions, of the 23d of October, 1656," to his lieutenant general, (Fendall,) in pursuance of the resolution, which he seems to have now formed. The injury done to one of the record books of the province, as before mentioned, has deprived us of the information to have been derived from this document, entitled, "instructions," &c. From subsequent documents, however, we learn, that his lordship had, with these instructions, sent a copy of the report of the commissioners for trade, in order, as we may suppose, to shew to all the inhabitants of the province the solid ground of his proceedings. The leaf torn out of the record book most probably contained a copy of this report, as also the preamble and one or two articles of the instructions; but from

* In the *Bibliotheca Americana*, under the year 1656, mention is made of another pamphlet, published in London in that year, having relation, as it would seem, to these provincial contests between Virginia and Maryland. It was entitled,— "Leah and Rachel, or the condition of the two fruitful sisters, Virginia and Maryland, by J. Hammond: quarto. London." As we have not been able to procure a sight of this pamphlet, a copy of which is not perhaps existing in Maryland at this day, the contents thereof are unknown to us. There are many families of the name of *Hammond*, still residing in Maryland, and the author thereof might possibly have been one of them. If so, we may presume, that he would have espoused the cause of the younger sister—Maryland. He might have thought, that Virginia might be likened unto *Leah*, the elder sister—homely and bleary-eyed, and for ever jealous of the rising beauty of *Rachel*, her younger sister. It may be said, however, that the sisters still have a great resemblance of each other both in morals and in manners.

a remnant of the leaf we collect, that his lordship had instructed his lieutenant general to see, that the act of assembly of 1649, ch. i. entitled, "An act concerning religion,"—"be duly observed in the said province by all the inhabitants thereof, and that the penalties, mentioned in the said act, be duly put in execution upon any offenders against the same or any part thereof;" and particularly that part thereof, whereby "all persons in the said province are to have liberty of conscience and free exercise of their religion." There seems to be every probability, that this part of these instructions were in exact conformity to the report of the commissioners for trade, and as that report was most probably intended to be agreeable to Cromwell's ideas, it affords additional evidence, that the disposition of this extraordinary man was at this time in favour of a general toleration of all sects of religion; perhaps indeed, through the interested motives of winning over all parties to assent to his assumption of the royal power.

In the third article of these instructions, his lordship, with a laudable gratitude, directed donations of land to be made to several of those, who had been conspicuously faithful to him during the late contests:—particularly to captain Josias Fendall, "his lordship's present lieutenant there," 2000 acres:—to Mr. Luke Barber, 1000 acres:—to Mr. Thomas Trueman, 1000 acres:—to Mr. George Thompson, 1000 acres:—to Mr. John Langford 1500 acres:—to Mr. Henry Coursay, 1000 acres.*

He moreover instructed his lieutenant and council to take special care of those widows, who had lost their husbands by the late troubles, viz. Mrs. Hatton, Mrs. Lewis, and Mrs. Eltonhead; that they should be supplied out of his lordship's rents and profits for their present relief and sustenance in a decent manner, in case they stood in need thereof; and that they let his lordship know, wherein he could do them any good, in recompense of their sufferings, and that they be assured, on his lordship's behalf, that he will continue his utmost endeavours, (by soliciting his highness and council,) for the procuring of justice to be done them for the lives of their husbands, and sat-

* Dr. Barber's letter, before stated, manifests his friendship for his lordship; Mr. Langford's "Refutation of Babylon's Fall," &c., much more so, and well deserved his lordship's remuneration; and Mr. Henry Coursey demonstrated his fidelity to his lordship in accompanying captain Stone on his march, and carrying a message from him to the Puritans of Severn. If there be any of the descendants of these gentlemen, above mentioned, now in possession of these ample estates, they may boast of holding them by a very honourable tenure.

CHAPT. VI. satisfaction for their losses from those, who have done them so great injuries; which he doubts not but will be at last obtained.

1656. He further instructed his governor and council to cherish and comfort, in what they could, all such persons as had approved themselves faithful to his lordship, and done him good service during the late troubles of the province; and that such persons should be preferred before any others to such places and employments of trust and profit as they might be respectively capable of; in particular Mr. Thomas Trueman, Mr. George Thomson, lieutenant Thomas Tunnell, and Mr. Barton: and that his said lieutenant and council let his lordship understand from time to time, wherein he could upon any occasion requite them and others, who have been faithful to his lordship, with any thing in the province for their advantage, according to their respective merits, assuring them that his lordship would be very ready and willing to gratify them in any thing, that should be reasonably desired of him and in his power to do.

Having thus expressed his gratitude to his friends in Maryland, his lordship proceeds in the last place to instruct his governor and council, relative to the *bounds* between his province and Virginia, so much the subject of contest and litigation at that period of time. For this purpose he directs them to take special care, that no encroachments be made by any person upon any part of his lordship's province; and for the better prevention thereof, he required them, to cause the *bounds* thereof to be kept in memory and notoriously known, especially the bounds between Maryland and Virginia on that part of the country known there by the name of the *eastern shore*. On this occasion he referred them to the maps of Maryland, which his lordship formerly sent thither; whereby the said bounds are described.* He also at the same time sent to them a copy of the proclamation, published heretofore by the then governor and council of Virginia, bearing date the 4th of October, 1638, for prohibiting any person of Virginia from trading with the Indians in Maryland without his lordship's license: in which proclamation were described the *bounds*, as they were then supposed to be, between Maryland and Virginia.†

* It is probable, that none of these maps of Maryland are now extant. I could find none in the council chamber.

† See before in the first chapter of this history, (p. 72, 73,) and the proclamation of the 4th of October, 1638, at large, in note (XIII.) Also, see the above

These instructions indicate the high hopes and strong assurances, which lord Baltimore now entertained, as to his speedy restoration to his proprietary rights over his province of Maryland. He might still, however, have retained in his own mind, perhaps after experiencing repeated instances of treachery, great distrust even in those, whom he had placed at the head of his provincial government. He therefore now did the wisest act, he had ever yet done or could possibly have done, since the death of his brother Leonard, next to transporting himself into his province,—he resolved to send his *brother* Philip Calvert to take care of his affairs there. For popular reasons, perhaps, he did not choose to make him governor; but he created him, by commission, bearing date the seventh of November, 1656, one of the councillors to the governor, and, as was usual with such office, a judge or justice of the provincial court. He also, by the same commission, made him *principal secretary* of his province; also, “principal officer, for the entring and recording of all grants to be made of any lands or offices within the said province, and for the probates, entring, and recording of wills and inventories, and granting letters of administration.” In the exercise of these great and important offices, he would necessarily have a considerable control over any very improper conduct of the governor or the rest of the council.* About the same time, and prior to the departure of his brother from England, as it would seem, he drew up certain additional *instructions*, bearing date the 12th of November, 1656, to his lieutenant general and council, in which he directs them to cause certain proportions of land, therein mentioned, to be surveyed and assigned to the several persons, whom he therein also mentions, “until his lordship should send a new great seal thither, (which he will shortly do,) whereby the said lands may be granted under the same.” One of the grants hereby intended to be made, and which probably was afterwards executed, was “to his lordship’s brother Philip Calvert, Esq., his secretary of the said province of Maryland, six thousand acres, to be erected into one or more manors, and to be called by such name or names as his lordship’s said brother shall think fit.” The third and last clause

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1656.
Lord Baltimore
sends his
brother
Philip Calvert to
Maryland.

mentioned *instructions*, of the 23d of October, 1656, at large in note (LXXXIX.) at the end of this volume, that is, so much of that document as is not torn off with the first leaf of the book.

* See this commission to Philip Calvert, esq., at large in note (XC.) at the end of this volume.

CHAPT. VI. also of these last mentioned *instructions* requires to be particularly noticed, inasmuch as it seems to indicate, that the lieutenant general or governor Fendall, although commissioned on the tenth of July preceding, had never yet entered on the duties of his office, unless he did so prior to his qualification by taking his oath of office. The clause is as follows:—

1656.

“3. His lordship doth hereby authorise and require his lordship’s brother, Philip Calvert, esqr., his principal secretary of the said province of Maryland, to administer in open court there the oath of his lordship’s lieutenant of the said province to captain Josias Fendall, his lordship’s present lieutenant there.”*

1657.
Mr. Barber appointed deputy governor, in the absence of governor Fendall.

Our documents do not furnish us with any further information whatever of the affairs of the province for the remainder of the year 1656. We are to suppose, however, that Mr. Philip Calvert embarked for America soon after the date of his commission; and would, therefore, probably have arrived in Maryland, at farthest in the spring of 1657. Accordingly, we find him sitting as a councillor with governor Fendall at St. Mary’s on the 18th of June, 1657. Although five persons had been by the governor’s commission nominated as his council, two of whom were captain Stone and Mr. Barber, yet on this occasion the “council,” as it is called in the record, consisted only of “the lieutenant and Mr. Secretary.” In the proceedings of the day, as recorded, it is expressly stated, that “the lieutenant” was Mr. Fendall, and from all circumstances we are warranted in the inference, that the “Mr. Secretary,” mentioned in the record, was Mr. Philip Calvert. The sole business, upon which they met, appears to have been the appointment of Mr. Luke Barber as deputy lieutenant or governor, in the room of Mr. Fendall, who, as stated in the record, then declared his resolution of leaving the province, upon business, as it subsequently appears, relative to the lord proprietary’s affairs in the province, which required his presence and personal attention in England. A commission to Mr. Luke Barber for this purpose accordingly appears in form on the record, stating the powers of governor Fendall under his commission of the tenth of July last to be the same as those granted to and held by captain Stone under the commission of the latter dated the sixth of August, in the

* Taken from the record book in the council chamber, entitled, “Council, HH. 1656 to 1668,” p. 6. Such parts of the same instructions of November 12, 1656, as relate *generally* to the surveying and granting of lands within the province, are stated in Kilty’s *Landholder’s Assistant*, p. 54.

seventeenth year of his lordship's dominion; (*Annog. Dom.*, 1648;) in which power was granted to captain Stone, in case of his death or absence out of the province, to nominate, elect, and appoint any other person of the council in his place.* Mr. Barber was, by his commission, to hold his office only until such time as governor Fendall should return again into the province, or until the lord proprietary should signify his pleasure to the contrary. His general powers also, as to granting warrants for taking up lands, were restricted by the same commission to cases, where the secretary, (Mr. Calvert,) should give a certificate "of *rights* duly entered in his office for the same."†

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VI.
1657.

In pursuance of the foregoing proceedings, governor Fendall appears to have embarked soon afterwards for England. Although the imputation of treachery has been attached to his character, as handed down to us, arising out of his subsequent conduct, yet there is no ground, on the present occasion, for supposing, that he was at present actuated by any other motive than a sincere fidelity to the cause of lord Baltimore; and it may, therefore, be presumed, that he now undertook his voyage to England for the sole purpose of consulting and co-operating with his lordship in such plans, as they should deem best, for the speedy restoration of the proprietary government in Maryland.

Fendall
goes to
England.

In the mean time, however, the affairs of the province presented a deplorable prospect. When an aggregation of people in a state of society are doomed to be harassed by two opposite factions, contending for the powers of government over them, the situation of every man in such a community becomes dangerous in the highest degree. It is this circumstance, which always renders rebellions or revolutions, as they may turn out to be called, alarming to every good mind. No man's property, liberty, or life can be enjoyed in such a state of things with any assurance of safety. He cannot serve two masters. If he obeys one, he is either destroyed, exiled, or punished by the other. This was precisely the lamentable condition of every man in Maryland at this time. Mr. Fendall, in conjunction with captain Stone and Mr. Barber had ventured, as it would appear, to rear the standard of revolt against the Puritan au-

The divi-
ded state
of the pro-
vince.

* See captain Stone's commission at large, before referred to, in note (LXII.) at the end of this volume.

† See a copy of the record of these proceedings in note (XCI.) at the end of this volume.

CHAPT. VI.
1657. **thority, usurped, as they contended, through the ascendancy acquired by the unfortunate battle of the Severn. But Mr. Fendall's revolt, when he left the country, does not appear to have extended further than the limits of St. Mary's county at most; but more probably only to those first settlements which were first made at and near to the contemplated city of St. Mary's. There were numerous inhabitants, who had seated themselves, not long after the first emigration to the province, on both sides of the Patuxent; who appear to have formed a distinct district of settlement from that of the original seat at the city of St. Mary's. Among these settlers many Puritans had intermingled and obtained grants of lands there; it being agreeable to lord Baltimore's system of general toleration of all sects of religion, that every applicant for a grant of land should be admitted thereto, on making out his *rights* to the same, whatever his religious profession might be. Hence therefore we find, that when the Puritans on the Severn revolted against the proprietary government, previous to the first "reducement" of Maryland in 1652, they found many friends on the Patuxent, who joined them. Captain Fuller and his council had also, after the government of the province was vested in them by the parliamentary commissioners—Bennett and Clayborne, in the same year, fixed the seat of government at the house of Mr. Preston on the Patuxent, where the provincial records were deposited, and the Puritan assembly of the 29th of October, 1654, was held; and we have just seen, that when governor Stone was about marching to Providence on the Severn, in 1655, he was obliged in some measure to make a conquest of most of the settlers on the Patuxent, and to take away their arms and ammunition; from the house of one of whom also—Mr. Preston, the provincial records were carried back to St. Mary's. The Puritans, therefore, appear at this time, on the departure of governor Fendall to England, to have had under them a full half, if not more, of the population of the province, comprehending the settlements on the Severn and the Patuxent, together with those on the isle of Kent; which island, although it had been acknowledged in the treaty with the Susquehanocks, of the fifth of July, 1652, to have belonged to captain Clayborne, yet, notwithstanding this acknowledgment of his propriety therein, the inhabitants thereof appear to have been still constantly subject to the Puritan government of the province.**

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1657.

Another
Puritan as-
sembly is
called, and
meets.

In this divided and distracted state the province appears to have been, when captain Fuller and his council thought it proper to convene another assembly. They met, agreeably to their summons as we may presume, on the 24th of September, 1657, at *Patuxent*. The lower house appears to have consisted of only ten members, including captain Richard Ewens the speaker. We notice also the name of captain Robert Vaughan among the members; which seems to be an additional confirmation of what we have just supposed, that the government of the isle of Kent acted in unison with or subordination to that on the Severn, and that Mr. Vaughan might now sit as a member for the isle of Kent county, as he had formerly done at St. Mary's under the proprietary government.* As the names of neither the governor—captain Fuller nor of any of his council, except captain Ewens, the speaker, do not appear in the list of the members of this session, it is possible, that they might have sat as an upper house.† We have no journal of their debates or proceedings, but only copies of the laws enacted by them at this session. The first legislative act done by them was a confirmation of the “act of recognition,” passed at the preceding session of assembly, held by the Puritans in October, 1654. Some acts of that same session, of no great moment, were now repealed by them. It was necessary also to provide for the expenses of their government; which they did under the denomination of “public charges;” but by a species of taxation not very popular in modern times—a poll tax. The act was as follows:—

“It is ordered, enacted, and declared, in the name of his highness the lord protector of England, and by the authority of this present general assembly, that all public charges of this province shall this present year be levied upon all persons taxable per

* By one of the acts of this session, Poplar island, lying contiguous to the eastern shore and south of and within a mile or two of Kent point, was made a part of the isle of Kent county. From which it may be inferred, that this small island, containing about seven or eight hundred acres, was then settled and inhabited.

† See the names of captain Fuller's council, before, p. 505. In this early period of our history, and amidst the civil disturbances of these times, it is a matter of some interest, especially to the posterity of the present day, to know what side their ancestors took in these provincial contests. The names of this assembly, as they are on the record, are as follows:—captain Richard Ewens, speaker; captain Robert Vaughan;—captain Robert Sley;—captain Joseph Weeks;—Mr. Robert Taylor;—captain Thomas Beston;—Mr. Peter Sharpe;—captain Phil. Morgan;—Mr. Michael Brooks;—and Mr. James Johnson.”

CHAPT. VI. poll; and all *men servants*, that are or shall be brought into this
 1657. province for the future, of what age soever they be, shall be
 taxable per poll as aforesaid."

It is to be presumed, that the "*men servants*," herein mentioned, were not *negro slaves*, but white servants imported into the province under indentures for a temporary servitude; and, as would appear to be reasonable, that the servants themselves did not pay this tax, but their owners. In this way, the tax would be, in a small degree, a tax upon *property*. Poll taxes, however, were not thought in those times so highly objectionable, as since the American revolution. It was the mode of raising public revenue then generally used in our sister colony of Virginia; from whom Maryland has always been accustomed to borrow both good and bad habits.* By another act of this assembly, "it was agreed and assented unto, that all necessary *charges*, that were occasioned by the disturbance of captain Josias Fendall, should be paid and discharged by a public levy on the province." This last mentioned act, together with an "order" of this same assembly, "for payment of all just demands for killing wolves in St. Mary's county," seem to indicate that governor Fendall's revolt, from the Puritan authority over the province, had not been quite successful even in St. Mary's county, but that this assembly exercised their sovereignty over that part of the province as well as the rest of it.

The Puritan government at Providence on the Severn having, in virtue of their executive or judicial power,† issued an order, soon after the battle in 1655, for the sequestration of the estates of such *delinquents*, as resided on Patuxent, Patowmack, and in St. Mary's, that is, of those of the proprietary party there;‡ which order not having been honestly executed, as it

* The *public levy* laid by the assembly of Virginia, which sat in November 1654, at James city, was a *poll tax*, to be levied on all the *titheables* of the several counties therein mentioned, at 26 lb. of tobacco *per poll*. Burk's Hist. Virg. vol. ii. p. 101. The *Maryland* poll tax was fixed, by our above mentioned assembly of 1657, at 32 lb. of tobacco *per poll*.

† This peculiarity in our proprietary government, and indeed in most of the English colonial governments, has been herein before noticed; to wit, that the governor and council of the province possessed threefold powers, and therefore acted occasionally as the *executive* branch of the government, or as a branch of the *legislature*, or in a *judicial* capacity; in the last instance constituting the provincial court. Captain Fuller and his council seem to have continued the same mode of government, except, perhaps, that it does not appear to be quite certain, that they ever sat as an *upper house* of the legislature.

‡ See before, p. 529.

would appear, this assembly, of 1657, now appointed a standing committee of three of their members, to wit, captain Richard Ewens, captain Thomas Beston, and captain Joseph Weeks, who were to continue to sit after the session; with power “to question and call to accompt any person whatsoever in the province, that had received or disposed of all or any part of the *fin*es amerced upon any of *the disturbers of the publick peace* of the inhabitants of this province *in the last engagement*; and that all the sheriffs, in their respective places and counties within this province as aforesaid, are likewise required by virtue of this order, to give and deliver a just accompt to the aforesaid committee of all and every part of the aforesaid *fin*es* by them received, or to whom they were paid, or by whom they were disposed; which foresaid accompt to be made and given to the foresaid committee, or any one of them, by the first of January next; and it is further ordered, by the authority aforesaid, that the said committee are required, in the speedy dispatch of their charge and trust committed unto them as aforesaid, faithfully to declare and make manifest all and every thing, that shall be in their own knowledge, or that shall be delivered or declared unto them, and return a just and full accompt and report thereof unto Mr. Michael Brooke or Mr. Peter Sharpe, before the provincial court to be holden at Patuxent in March next, which foresaid report is there to be presented to the provincial court as aforesaid, to their consideration in the premises as far as may tend to the public good, that they may receive further satisfaction therein.”†

When this assembly adjourned, or rose from their session, we

* The word—*fin*es, here used, is to be understood as synonymous to *ransom* or *composition*. To make *fine* and *ransom* for any offence amounting to a breach of the peace is an old law phrase. See *Litt.* sect. 194, and *Coke’s* comment thereon. Also *Cunningh.* Law Dict. verb. *Finem facere*. There was, at common law, an ancient writ, entitled, *Fine capiendo pro terris*, &c., “lying for one that, upon conviction by a jury, having his lands and goods taken into the king’s hands, and his body committed to prison, obtaineth favour for a sum of money, &c., to be discharged from his imprisonment, and his lands and goods to be re-delivered unto him.” *Ibid.* The above proceedings, against our Maryland *delinquents*, seem to have been founded on these principles. The purport of the order of 1655, to which these *fin*es evidently had relation, was, not to *forfeit* the real estates of the *delinquents*, but to *sequester* the profits arising from them, until composition was made by the offenders; and, in the receipt of this composition money, some frauds appear to have been practised, as may be inferred from the above order of the assembly.

† The foregoing extracts from the acts and orders of the Puritan assembly, of September, 1657, were taken from the book in the council chamber, entitled, “Assembly Proceedings from 1637 to 1658,” p. 465.

CHAPT. VI. are not informed; nor have we any further information of any transactions relative to the province during the remainder of the year, except those which had in the intermediate time taken place in England.

The agree-
ment be-
tween lord
Baltimore
and the
agents,
Bennett
and Mat-
thews,

The before mentioned report of the committee for trade, of the 16th of September, 1656, being in a great degree decisive of the dispute between lord Baltimore and the Puritan agents, Bennett and Matthews, (wanting only the confirmation of the lord protector,) and purporting in substance, as may be fairly inferred, that lord Baltimore should be reinstated again in the government of his province, though perhaps under certain restrictions, conditions, or limitations therein expressed, these agents began to perceive, from the inattention and indifference of the lord protector about the business, or, as stated in the record, "by reason of his great affairs, not having leisure to consider of the said report," that his final decision, if ever made, would in all probability be a confirmation of the said report. Under this impression, they seem to have been now softened into a disposition for accommodation of the controversy on friendly terms with the lord proprietary. It will be recollected, that Mr. Edward Digges had been sent to England, during the preceding year, by the assembly of Virginia, as an additional agent, with Bennett and Matthews, for the management of the affairs of that province in England. In the special instructions of this assembly to Mr. Digges, they directed him, "to get address to his *royal* highness the lord protector, and to assure his highness, that, according to his letter, they had not interested themselves in the business betwixt Maryland —*—, and had been unconcerned in their quarrel from the beginning until this time, and so should continue according to his highness's direction in that letter." Mr. Digges, on his arrival in England, most probably retained in remembrance this important sentiment of the assembly. It is possible also, that he might, from other causes not now known, have entertained a personal friendship for lord Baltimore.† However that might have

* Meaning, "betwixt Maryland" and the Puritans settled at Providence on the Severn. It would appear from this, and the exclusive application from the term *Marylanders* to the inhabitants of St. Mary's county at the time of the battle on the Severn, as before mentioned, and from other circumstances, that the Puritans on the Severn did not acknowledge themselves as being within lord Baltimore's province of Maryland, but as being either a part of Virginia or a distinct colony by themselves.

† The families of Calvert and Digges were subsequently allied by intermarriages; but they do not appear to have been so at this time.

been, it is certain, that Mr. Digges, after his arrival in England, which must have been in the spring of 1657, interested himself much in favour of an accommodation with lord Baltimore. This circumstance is acknowledged with some emphasis in the body of the agreement itself, as will presently be seen. All things in England now looking unfavorably for the cause of the Puritans of Maryland, especially as Cromwell had been just offered both the crown and title of *king* of England, which he reluctantly rejected, but had re-accepted that of *protector* with many additional powers and prerogatives, and from thenceforth paid much court to the old nobility of England, establishing anew the house of lords as a branch of the legislature, Mr. Bennett, who appears to have been a zealous Puritan and a faithful servant of those in Maryland, was under a necessity of making the best terms he could with lord Baltimore. His lordship, in prudence also, adopted a similar disposition. Accordingly, on the 30th of November, 1657, without doubt after many interviews and discussions on the subject, an agreement was entered into and signed by lord Baltimore and the aforesaid agents, Bennett and Matthews ; of which the following is a copy.

“Articles of agreement between the lord proprietary of this province and Richard Bennett, esqr., which are as followeth, viz.

“Whereas there have bin of late, viz. in the year 1652, and since, some controversies between the right honorable Cecilius Lord Baltimore lord and proprietary of the province of Maryland and Richard Bennett, esqr., and other people in Maryland nowe or late in opposition to his lordship’s government of the said province upon which have unhappily followed much bloodshed and great distempers there, endangering the utter ruine of that plantation if not timely prevented, and whereas upon complaint made thereof by the said lord Baltimore the matter was by his highness the lord protector referred first to the lords commissioners, Witlocke and Widdrington, whose report thereof was afterwards referred by the councill to the commissioners for trade, who made their report also thereupon to his highness and councill, but they by reason of their great affaires having not as yett leisure to consider of the said report, the same remains yett undetermined, and in the mean time the inhabitants of the said province remaine in a very sad distracted and unsettled condition by reason of the said differences touching the said govern-

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1657. ment there, therefore the said lord Baltimore, upon a treaty with the said Richard Bennett and colonel Samuel Matthews, occasioned by the friendly endeavours of Edward Digges, esqr., about the composure of the said differences, and in pursuance of the said report of the said committee for trade, dated 16th of September, 1656, hath for the good of the inhabitants of the said province condescended and is willing to do as followeth, viz., in case the said people in opposition to his lordship's government there as aforesaid, shall forthwith, upon notice hereof, from his lordship's governor or secretary there, for the time being, cease and forbear for the future, from executing any act or power pertaining to government and administration of justice within the said province, and shall deliver up to his lordship's said governor or secretary aforesaid, all records of the said province now in their power, and also his lordship's former great seal of the said province, if it be found or procured by them, and shall for the future give all due obedience and submission to his lordship's government there, according to his pattent of the said province, that then his lordship doth promise :

“*Imprimis*, that no offences or differences, which have arisen in Maryland upon and since the said controversies there, shall be questioned by his lordship's jurisdiction there in the said province, but shall be left to be determined by such ways and means as his highness and the councill shall direct.

“2. *Item*, that the said people in opposition as aforesaid shall have patents from his lordship for such lands in the said province as they can claime due unto them by his said lordship's conditions of plantation, and in the same manner and with all the same rights as they might have had if the said controversies and differences had not happened, any former order, instructions, proclamations or any other thing proceeding from the said lord Baltimore, or any deriving any authority from him to the contrary hereof in any wise notwithstanding, provided that they and every of them respectively who shall desire the same, doe sue out their said patents for the said lands, within nine months after notice hereof given them by his lordship's said governor or secretary there for the time being, and that before they have theyr pattents they take the oath of fidelity there to his said lordship with such alteration in it as is mentioned in the said report of the committee for trade, and shall pay or satisfy his said lordship's receiver generall there for his lordship's use, all arrears of

rent due to his said lordship from the time they first entered upon the said lands respectively, and due fees to his said lordship's secretary, surveyor, and other officers there as other inhabitants ought to doe, and according to his said lordship's conditions of plantation for the said province. CHAPT.
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"3. *Item*, that such of the said people in opposition as afore-said, who shall desire to remove themselves or estate from Maryland, shall have free leave and a year's time so to doe.

"4. Lastly, the lord Baltimore doth promise, that he will never give his assent to the repeal of a law, established heretofore in Maryland by his lordship's consent, and mentioned in the said report of the committe for trade, whereby all persons, professing to believe in Jesus Christ, have freedom of conscience there,* and doth faithfully promise upon his honour to observe and performe as much as in him lies the particulars above mentioned; and his lordship doth hereby authorise and require his lordship's governor and all other his lordship's officers there to give assurance to the people of their due performance hereof. In witness whereof, the said lord Baltimore hath hereunto sett his hand and seale the 30th day of November, 1657.

C. BALTEMORE.

SAMUEL MATTHEWS.

"Signed, sealed, in the presence of Edward Diggs, John Harris, Richard Chandler, A. Stanford, William Barrett.

"This is the paper which was mentioned in my letter to captain William Fuller and being of the same date with this.

RI: BENNETT."†

The signature of Mr. Bennett, as above, is exactly as it now appears on the record. Although it does not seem to have been strictly in legal form as a *party* to the instrument of agreement, yet, as his name is mentioned in the body of the instrument of writing as a *party* to the same, we must suppose, that his mode of signature was then deemed sufficient. It appears from thence, however, that immediately on the execution thereof, on the same day, he dispatched a letter to captain Fuller, the Puritan governor of Maryland, apprising him of these proceedings. Governor Fendall also, who was now in England, must have soon

* This alludes to the act of assembly of 1649, ch. 1, entitled "an act concerning religion," herein before stated.

† Taken from the book in the council chamber, entitled, "Council, &c. HH 1656 to 1668," p. 10.

CHAPT. afterwards embarked for Maryland; taking with him, not only
 VI. an authenticated copy of this important agreement, but also spe-
 1657. cial instructions from the lord proprietary to be observed in fu-
 ture by his governor and council in Maryland. These instruc-
 tions bear date the twentieth day of November, 1657, ten days
 prior to the date of the agreement herein just before stated; and
 that no error in this respect has here occurred by the inattention
 of the transcribers of those instruments into our records or other-
 wise, may be fairly inferred from the remarkable circumstance,
 that these instructions make no mention of or reference to the
agreement; which they would necessarily have done, had they
 not been drawn up and delivered to governor Fendall prior to
 that agreement, as their date purports. If such was the case,
 it seems to indicate, that his lordship now entertained a thorough
 conviction, that his proprietary authority would be speedily and
 peaceably restored to him.

In these instructions his lordship authorises his lieutenant of
 the province for the time being to discharge any one of his coun-
 cil there, who should desire the same; and moreover, with the
 approbation of any three of the council, of whom his brother
 Philip Calvert was to be one, to discharge any one from being a
 councillor, who should refuse to act as such or give attendance at
 the provincial courts without good excuse.

Lord Bal-
 timore's
 instruc-
 tions to his
 governor
 for the time
 being.

Also, after stating that he had now sent to the province a new
 great seal by captain Josias Fendall, his lieutenant there, to whom
 the custody thereof was now committed as keeper of the great
 seal, his lordship authorises him to pass grants or patents of lands,
 as heretofore used, to any persons whatsoever who should be en-
 titled thereto under his lordship's conditions of plantation; al-
 though such grantee did not make his claim thereof in due time
 or had since forfeited his right to the same; which grants or pat-
 ents were to be attested by his lordship's secretary, Mr. Philip
 Calvert, before they should be deemed valid; provided always,
 that such grantee or patentee do take the *oath of fidelity* to his
 lordship and his heirs, mentioned in his last conditions of plan-
 tation for the province,* with such alteration in the said oath as
 was agreed unto by his lordship, and directed in the report of
 the committee for trade, dated the 16th of September, 1656; a

* The Conditions of Plantation, here referred to, appear to be either those of
 the twentieth of August, 1648, which see in note (LXIX.) or those of the second
 of July, 1649, (see before, p. 375,) both to the same purport as to the oath of
 fidelity.

copy of which report his lordship had before sent to the province together with his instructions of the 23d of October, 1656.* To this same clause in these instructions his lordship thought it proper to annex two other provisoes; the first of which, being of some *political* importance, may be here stated:—viz., “Provided also, that such person or persons, who had acted or abetted any thing against his lordship’s lawful right and jurisdiction in this province, do make and subscribe in the presence of his lordship’s lieutenant and principal secretary of the said province for the time being, or one of them, a *submission*, of the forme hereunto annexed, to remaine on record here, or such other submission as his lordship’s lieutenant and secretary, or either of them, in the absence of the other out of the said province, shall think fit, before any such grant or patent of any land in the province be passed under his lordship’s great seal unto them respectively as aforesaid.”† This form of *submission* was subsequently confirmed by the agreement of the 20th of March following, and further confirmed by an act of the next session of assembly, (April, 1658,) and substituted in lieu of any oath of fidelity before mentioned.

The third clause related to a private grant of ten thousand acres of land to Edward Eltonhead, esqr.; which, although it is expressed to have been “upon certain terms and conditions of a certain number of persons to be transported by the said Edward Eltonhead within a certain time,” yet, it is probable, that this Mr. Edward Eltonhead was a near relative (possibly the son) of Mr. William Eltonhead, who had been shot by the Puritans of Severn after the battle of 1655, as before stated, and that his lordship might have been more particularly anxious to reward him on that account.

The fifth clause authorised the grants of lands to *foreigners* in the same manner as if they had been of *British* or *Irish* descent.

The sixth and last clause seems to indicate some little distrust entertained by his lordship, of the fidelity of his present lieutenant or governor of his province, Fendall. It states, that, whereas his lordship had authorised, in these instructions, his lieuten-

* See before, p. 541–2, and note (LXXXIX.); but as these instructions, as before stated, are not now entire upon our records, the “alteration” alluded to does not appear.

† The reader will see this form of *submission*, with the instructions, presently referred to.

CHAP'r. ant to act and do several things with the advice and approbation
 VI. of his lordship's brother Philip Calvert, esqr., he herein provides,
 1657. that in case the said Philip Calvert should die, or by absence
 out of the province or otherwise should be disappointed of act-
 ing there, the said Josias Fendall, or any other his lieutenant of
 the said province for the time being, should act and do the same
 things with the advice and approbation of captain *Thomas Corn-
 waleys*, esqr., in lieu and stead of the said Philip Calvert, esqr.
 The reader will greet with pleasure the return of this venerable
 old primitive settler of the province upon the stage of our provin-
 cial affairs. He had often before stept forth in the hour of danger,
 and by his prowess and his prudence rescued our infant colony
 from the brink of ruin. From a similar motive, he now without
 doubt again came forward, to tender his services to his noble
 friend, the proprietary of the province.*

1658. After a winter voyage across the Atlantic, governor Fendall
 Governor arrived in Maryland, on Friday, the 26th of February, 1657,
 Fendall re- (O. S.) when Mr. Barber surrendered up to him his authority as
 turns to governor. On the next day, a council was held at St. Mary's
 Maryland. (the old city, probably,) at which were present, the lieutenant
 (Mr. Fendall,) Mr. Secretary, (Philip Calvert,) and captain
 William Stone; when the before mentioned articles of agreement
 between the lord proprietary and Richard Bennett, esq. were
 published.† Upon the reading of which, the lieutenant, Mr.
 Fendall, immediately dispatched letters to captain William
 Fuller, Mr. Richard Preston, and the other gentlemen, compos-
 ing the government at Providence on the Severn, desiring them
 to give him, Mr. Secretary, and captain Thomas Cornwaleys, a
 meeting at St. Leonard's creek in Patuxent river, upon the
 eighteenth of March following, in order to the performance of
 the articles of agreement before mentioned, a copy of which was
 sent to them with the aforesaid letters.

*See these instructions, of the 20th of November, 1657, at large in note (XCII.)
 at the end of this volume.

† So stated in the book entitled, "Council, H H, 1656 to 1658," p. 10. It may
 be here noted, that there are grounds to suppose, that no printing press had as
 yet been established in the province, so that the publication of these articles of
 agreement must have been made, as that of proclamations and other public docu-
 ments had heretofore been done in the province, by causing the sheriff of the
 county to read the same publicly at the seat of justice or other public place, and
 posting the same at the like places for the inspection of the people. This is the
 mode, by which statutes were published in England in the early period of its
 history.

On the appointed day, the eighteenth of March, the three gentlemen last mentioned attended in council at St. Leonard's creek, agreeably to appointment; but wind and weather not permitting captain Fuller and the rest from Providence to arrive at the appointed time, it was resolved by governor Fendall and the other two in council, on the part of the lord proprietary, that they should wait till Saturday the 20th of March.

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On the twentieth of March, captain William Fuller, Mr. Richard Preston, Mr. Edward Lloyd, Mr. Thomas Mears, Mr. Philip Thomas, and Mr. Samuel Withers, arrived, but the day being far spent, and Sunday (the next day) not fit to treat of business, all further treaty was put off till Monday the 22d.

On the twenty-second of March, both parties having met, the lieutenant (Mr. Fendall) read the before mentioned articles of agreement and demanded the records, the great seal, and the whole government to be resigned up into his hands, and in the name of the lord proprietary, promised a ratification of the said articles under the great seal of the province. The before mentioned instructions of his lordship to his lieutenant general were then also read. It appears from the record of the proceedings of this day, that captain Fuller and his council were not perfectly content with these articles of agreement entered into between lord Baltimore and Mr. Bennett, particularly as to the first article thereof, which stipulated, "that no offences or differences, which had arisen in Maryland upon and since the said controversies there should be questioned by his lordship's jurisdiction there, but should be left to be determined by such ways and means as his highness and his council should direct." Not caring to trust to the future decision of his highness, the lord protector, they therefore required an additional agreement containing a general clause of indemnity on both sides, for any act made or done in the transactions of the affairs of the province since the first of December, 1649, to the day of the date. Such a clause of "indemnity on both sides" was at first objected to by governor Fendall and his council, on the ground that it would be "an admission of a necessity of pardon, and consequently an implication of guilt in his lordship's officers; but" (as the record further states) "upon consideration; that some of his lordship's officers needed an indemnity for breach of trust," they assented to a clause for that purpose.

Negotiations between the proprietary and puritan governors, for a surrender of the province to the former.

The second clause thereof also, as to the oath of fidelity, was

CHAPT. VI. 1658. strongly opposed by captain Fuller and his council. The proprietary party contended, that an oath of fidelity was of common right due to any lord of [a palatinate government,]* and ought not to be utterly waived. They, however, agreed, that an article should be drawn up, waiving it as to persons *then* resident in the province, but to stand in force as to all others.

The Puritan party further required also, that certain clauses should be inserted in a new agreement, for the confirmation of all past proceedings done by them in their assemblies and courts of justice since the year 1652, the time of the first "reducement" of the province; and lastly, they insisted, that none of them should be disarmed, so as to be left to the mercy of the Indians. After considerable debate upon and discussion of these proposed articles, during this day and the next the 23d, they were at last acceded to by the proprietary party, and directions given, that they should be prepared and engrossed against the next morning.

The final agreement and surrender in consequence thereof.

On the twenty-fourth, "the governor and council met, and the articles were read, fairly engrossed in parchment, to the commissioners," (captain Fuller and his council,) "which being to the content and peace of all parties, were by the governor and——† signed; and afterwards in the face of the whole people sealed, as follows:

"Articles agreed upon and consented to by captain Josias Fendall, lieutenant of this province of Maryland, and Philip Calvert, principal secretary of the same, for and in behalfe of the right honourable Cecilius lord and proprietary of the provinces of Maryland and Avalon, &c., upon the surrender of the government of the said province to his lordship's said officers by captain William Fuller, Mr. Richard Preston, &c. this 24th day of March, in the yeare of our Lord, 1657.

"*Imprimis*, That all ministers of justice and officers military, with all persons whatsoever, be and remain indemnified on both sides, and freed from any charge or questioning for any act or passage made or done in the transactions of the affairs of this

* Instead of the above words in brackets, there is a blank in the record. I have, however, to make sense of the passage, ventured to fill it up as above.

† This blank is so in the record. It would appear from the attestation, that these articles were "signed" only by governor Fendall and Mr. Secretary Calvert. The instrument might have been considered as an *act of state*, emanating from the legitimate authority of the province—the governor and secretary, and not requiring the signature of captain Fuller, or any of his party.

province since the first of December, one thousand six hundred and forty-nine, to the day of the date above written, without further consideration of restitution or satisfaction to be required or made on either side. CHAPT.
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“2. That all sheriff’s and clerk’s fees, as well as secretary’s fees, which sheriffs, clerks, and secretaries, have been made since the year 1652, shall be paid their due fees and arrears thereof; and that all levies and taxes, and arrears of the same, raised and levied by the two last assemblies, viz. in the years 1654 and 1657, and in every county their respective county-charge, be fully satisfied and paid to whom they are appointed.

“3d. That no person whatsoever within the province shall by reason of any act or passage made or done, in relation to the late alteration of the government made in the year one thousand six hundred and fifty-two, be deemed, or hereafter be made, incapable of electing or to be elected to all future assemblies.

“4th. That no act or orders of assemblies or courts within this province, made or past since the year one thousand six hundred and fifty-four, in cases of *meum et tuum*, shall be declared void by pretence of irregularity of the power of government established in the year one thousand six hundred fifty and four.

“5th. That all such as shall, within six months after the date hereof, come or send to the secretary’s office, and there, according to conditions of plantation, make their right appear, shall have warrants granted for so much land as they shall make appear to be due, and the same land by them entered upon, by virtue of *careats* entered in county or provincial courts:—Provided, that such lands be not formerly taken up by any lawful warrant from his lordship’s other officers, nor reserved for his lordship’s uses.

“6th. That the oath of fidelity shall not be pressed upon the people now resident within this province, but in stead and place thereof, an engagement be taken and subscribed in manner and form following, viz :

“I, A. B., do promise and engage to submit to the authority of the right honourable Cecilius lord Baltimore and his heirs, within this province of Maryland, according to his patent of the said province, and to his present lieutenant and other officers here by his lordship appointed, to whom I will be aiding and assisting, and will not obey or assist any here in opposition to them.

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1658.

“7th. Lastly, that no person whatsoever within this province shall, by any colour or suggestion, be disarmed or dispoyled in his armes or ammunition, (and thereby, consequently, left to the cruelty of the Indians,) unless such person be proved to bear armes to an hostile intent, or contrary to the usual and allowable customes of the country for such man’s defence.

“In witness whereof, we the said captaine Josias Fendall, lieutenant of this province of Maryland, and Philip Calvert, principal secretary of the same, have set our hands and fixed his lordship’s great seale for this province.”*

These articles being signed, sealed, and delivered to the “commissioners,” (captain Fuller and his council,) “they” (the “commissioners,”) with many others, subscribed the engagement, and delivered the record thereof to Philip Calvert, secretary of state.

At the same time the governor’s commission† was publicly read and proclaimed, and writs issued immediately for an assembly to be held at St. Leonard’s,‡ on the 27th of April following.

Thus, after a lapse of six years, after his lordship had been deprived of the government of his province, we see him again restored to the full enjoyment thereof beyond any probable expectation. But the same coincidence of circumstances which was now in the mother country, tending to a restoration of the exiled royal family to the throne of England, had also contributed to bring about a more speedy restoration of the lord proprietary to his province. Although Cromwell had just rejected most unwillingly the *title* of king, yet he manifested now towards the close of his life an anxious desire to reinstate the kingdom in all its ancient political institutions; (particularly in the re-establishment of a house of lords;) provided, that he could retain the hereditary sovereignty. It was observed, that he paid great court to the ancient nobility of the realm. With this spirit and temper, it is highly probable, that Bulstrode Whitlocke, esq., and sir Thomas Widdrington, both lawyers of note, and commissioners of the great seal for the office of chancellor, were actuated, when they made their report on the first reference

* Taken from the Council book, *Liber*, H. H., 1656 to 1668, so far as they have not been erased and torn out. The defective parts of that record have been supplied by the recital of the same articles in the act of assembly of 1658, ch. 1.

† See this commission in note (LXXXVII.) before referred to.

‡ Meaning, most probably, *St. Leonard’s creek*, where the preceding negotiations had taken place.

of the Maryland disputes to them by Cromwell; and from them it is probable, that the committee for trade had taken their favorable sentiments also in behalf of lord Baltimore's proprietary rights. They saw no inconsistency with or obstruction to the liberties and privileges of the freemen of Maryland under a proprietary government, agreeably to lord Baltimore's patent. He had been at great expense in planting the colony, and it would have been injustice, particularly at that early period after the settlement thereof, to have deprived him of a just remuneration for those expenses. He had always allowed, from the first settlement of the colony, a full enjoyment of all that fanciful *religious* liberty, which was then pretended to be the order of the day. As this impolitic conduct of his had, without doubt, brought upon him the internal commotions and insurrections within his province, so also on the contrary with some wise and liberal statesmen in England, into whose disposal his cause most fortunately happened to fall, it must have operated powerfully in procuring his restoration.

NOTES AND ILLUSTRATIONS.

NOTE (I.) p. 24.

The following state paper is copied from Chalmers's Annals, ch. IX. note, 18, who publishes it as—"From Maryland pap. vol. 1, bundle C.;"—which purports to be from *papers* still extant in the plantation office, England.

"At the Star Chamber:—3d July, 1633.

PRESENT,

Lord Keeper,
Lord Privy Seal,
Lord High Chamberlain,
Earl Dorset,
Earl Bridgewater,

Earl Danby,
Lord Viscount Wentworth,
Lord Viscount Falkland,
Lord Cottington,
Mr. Secretary Windebank.

"Whereas an humble petition of the planters of Virginia was presented to his majesty, in which they remonstrate, that some grants have lately been obtained of a great portion of lands and territories of the colony there, being the places of their traffic, and so near to their habitations, as will give a general disheartening to the planters, if they be divided into several governments, and a bar put to that trade which they have long since exercised towards their supportation and relief, under the confidence of his majesty's royal and gracious intentions towards them, as by the said petition more largely appeareth: Forasmuch as his majesty was pleased, on the 12th of May last, to refer to this board the consideration of this petition, that, upon the advice and report of their lordships such orders might be taken as to his majesty might seem best: It was thereupon ordered, on the 4th of June last, that the business should be heard on the second Friday in this term, which was the 28th of the last month, and that all parties interested should then attend; which was accordingly performed; and their lordships, having heard the cause, did then order, that the lord Baltimore, being one of the parties, and the adventurers and planters of Virginia, should meet together betwixt that time and this day, and accommodate their controversy in a friendly manner, if it might be, and likewise set down in writing the propositions made by either party, with their several answers and reasons, to be presented to the board this day; which was likewise accordingly done. Now, their lordships, having heard and maturely considered the said propositions, answers, and reasons, and whatever else was alledged on either side, did think fit to leave lord Baltimore to his patent, and the other parties to the course of law, according to their desire. But, for the preventing of farther questions and differences, their lordships did also think fit and order, that, things standing as they do, the planters on either side shall have free traffic and commerce each with the other, and that neither party shall receive any fugitive persons belonging to the other, nor do any act which may draw on a war from the natives upon either of them: And, lastly, that they shall sincerely entertain all good correspondence, and assist each other on all occasions, in such manner as becometh fellow subjects and members of the same state."

The preceding document is published also in Hazard's Collections, vol. 1, p. 337; but the copy there varies a little in some words and expressions from that in Chalmers's Annals; the most material passage of which is the following; instead of—"their lordships did order, that, *things standing as they do*, the planters on either side shall have free traffic," &c., as above; in the copy in Hazard's Collections it is thus;—"their lordships did also think fit and order, *that things stand as they do*; the planters on either side shall have free traffic," &c.

It may not be improper to subjoin here also a remark of Chalmers, upon the preceding paper. "The wisdom as well as equity of the decisions of the privy council, with regard to Maryland, may be attributed to the presense of lord Strafford" (lord Viscount Wentworth,) "who was the friend of Sir George Calvert, and extended his protection to the son, because he recollected the good offices of the father." The reason assigned here by Mr. Chalmers for the foregoing decision does not appear to be altogether satisfactory. As the order seems at this day to have been clearly founded in right and justice, I would rather attribute the decision to the "presence" of Sir *Thomas Coventry*, the "lord keeper," than to that of lord Viscount *Wentworth*, whose political character, as to consistency, was certainly equivocal, and personal partiality is not an honest ground for the decision. According to lord *Clarendon*, (*Hist. of the Civil Wars*, p. 15, folio edit.) Sir *Thomas Coventry* was one of the ablest lawyers of his time,—had successively filled the offices of solicitor and attorney general, "with great abilities and singular reputation of integrity," and in his office of lord chancellor, (or "keeper" of the great seal, in which he appears on this occasion) this historian further adds,—"*Sure justice was never better administered.*" Henry Montague, earl of Manchester, the "lord privy seal" above mentioned, had also acted with ability in the highest stations of the law; having succeeded lord *Coke*, in the year 1616, as lord chief justice of the court of king's bench. Lord *Clarendon* observes also of him, that "he was full of integrity and zeal for the Protestant religion." It is true, that lord *Cottington* and secretary *Windebanke*, especially the latter, are admitted to have been great patrons of the English Catholics. But their influence in the council could have little weight with men of the preceding characters.

NOTE (II.) p. 28. .

This Patowmack-town was the same Indian town as that called Patowomeke in captain Smith's History of Virg. vol. ii. p. 177, when he, as the first discoverer, first explored the Patowmack river in the year 1608; an account of which has been before given in sec. VII. of the introduction to this history. As an Indian town, it must have been, at this time, when governor Calvert visited it, one of considerable population and importance, and had either given to the river or received therefrom the name of *Patowomeke*; for, according to Smith, in the year 1608, it could then turn out two hundred warriors; which, according to Mr. Jefferson's conjectural proportion of warriors to inhabitants, at that period of time, to wit, as three to ten, would indicate a population of at least six hundred men, women, and children. Having experienced but little interruption from Europeans in the lapse of twenty-six years between Smith's first visit to them in 1608 and this by governor Calvert in 1634, their numbers were not probably now much diminished. Such visits, as had been in the intermediate time made to them by the English, were for the most part friendly, except in one instance. In the year 1610 captain Argall was sent by the then governor of Virginia, (lord Delaware,) during a time of great scarcity there, bordering on a famine, to Patowomeke "to trade for corne: where finding an English boy, one Henry Spilman, a young gentleman well descended," (as stated by Smith in his Hist. vol. ii. p. 2, and 6,) "and preserved from massacre by the kindness of

Pocahontas," who had placed him for security with the Patowomekes, captain Argall, through means of this lad, "had such good vsage of those kinde salvages, that they fraughted his ship with corne, wherewith he returned to *James-towne*." It was here also, that captain Argall, on another trading voyage for corn, in the year 1612, found means, through the treachery of Japazaw, the then king of the Patowomekes, whom he bribed with a brass kettle, to decoy Pocahontas herself, who was then in that neighbourhood, on board of his vessel, and carried her with him to James-town, where she was not long afterwards married to Mr. John Rolfe, and peace with Powhatan thereby procured. *Ibid.* p. 14. It appears also, that this place, and the country round about it, must have been, even under the imperfect agriculture of Indians, uncommonly fertile: for, in the year 1619, Japazaws, the king, went to James-town, "to desire two ships to come trade in his river" A vessel was accordingly sent under the command of captain *Ward* for that purpose, but on his arrival there, finding that "the people there dealt falsly with him, hee tooke 800 bushels of corne from them perforce." *Ibid.* p. 39. About the time of the great massacre in Virginia, in the year 1622, captain Raleigh Croshaw, a man of some note among the Virginia settlers at that time, having gone to the Patowmack with captain Spilman, the same person, as it would appear, who was a lad there in 1610, on a trading voyage, among other places on that river visited this town of the Patowomekes, and was there persuaded by the king, (perhaps Japazaws, before mentioned,) to remain with him, and "be his friend, his countenancer, his capitaine, and director against the *Nacochtanks* and *Moyaons* his mortal enemies." To which Croshaw agreed, persuading one *Elis Hill*, another Englishman, to remain with him. Croshaw's principal design appears to have been to form a settlement here, and to carry on a trade with the Patowomekes for his own private gain. Not long after he had been here, captain *Hamar* arrived from James-river in a vessel to trade for corn, and applied to the king for that purpose. "The king replied hee had none, but the *Nacochtanks* and their confederates had, who were enemies both to him and them. If they would fetch it, he would give them 40 or 50 choice Bowmen to conduct and assist them." These *Nacochtanks* were seated on the Maryland side of the Patowmack, in Prince George's county, just below the mouth of the eastern branch. The offer of this sanguinary and revengeful king was very improperly embraced by the English, and a party of them, conducted and aided by the savages was sent by Hamar. They attacked the Nacochtanks, and, "after a long skirmish with them," killed eighteen of them, and drove the rest out of their town, which they plundered, and took away with them what they wanted, "and spoiled the rest." Hamar returned to James-town, leaving at Patowomeke the additional number of four men, with Croshaw and Hill. The late massacre, however, soon created in these six men some alarms, and they, with the assistance of some of the savages, built a fort, "in a convenient place," near to the Patowomekes town. Croshaw thus securely settled, as he thought, sent, by another vessel from James town which came to trade in Patowomeke, a message to the governor and council of Virginia, that "if they would send him but a bold shallop, with men, armes, and provision for trade, he would provide them by the next harvest, (in the autumn,) "corne sufficient, but, as yet, it being but the latter end of June, there was little or none in the country." In consequence of this message, captain *Madyson*, with two vessels, "and some six and thirtie men," was sent to Croshaw. Madyson, after his arrival at Croshaw's fort, proceeded further up the river to the same Indian town, before mentioned, called, *Moyaones*; situated in what is now Prince George's county, in Maryland, about six miles above Mount Vernon; "where hee got provision for a moneth, and was promised much more; so he returned to Patowomeke; but, not liking so well to live amongst the salvages as Croshaw did," (who had by this time returned back to James-town,)

"he built him a strong house within the fort, and was well used by the salvages." Madyson, however, seems to have been a more timid man than Croshaw, and, in the opinion of Smith, was "too jealous," and entertained improbable suspicions, of the treachery of the king of the Patowomekes. Upon some suggestion made to him, that this king was secretly in league with Opechancanough, who had dictated the massacre in the preceding spring on James river, to murder Madyson and his party now at Patowomeke. Madyson, having decoyed the king and his son into his strong house within his fort, set a guard of men over them, then with the rest of his men sallied out upon the town of the Patowomekes, and most cruelly and unjustifiably "slew thirty or forty men, women, and children;" the remainder of them escaping out of the town. He then returned to his fort, "taxing the poore king of treason, who denied to the death not to know of any such matter, but said,—*This is some plot of them that told it, onely to kill mee for being your friend.* Then Madyson willed him to command none of his men should shoot at him as he went aboard, which he presently did, and it was performed; so Madyson departed, leading the king, his sonne, and two more to his ship, promising when all his men were shipped, he should returne at libertie; notwithstanding he brought them to James towne, where they lay some daies, and after were sent home by captaine Hamar, that tooke corne for their ransome." *Smith's Hist.* vol. ii. p. 86–88. It was to have been expected, that this unnecessary cruelty towards the Patowomekes would have excited their revenge on some future occasion. Accordingly, in the latter end of the year 1622, or in the beginning of 1623, when captain Spilman, before mentioned, who had lived so long with the Indians, and had been in part brought up by them, was sent from James river "to trucke in the river of Patowomeke," without regarding the former acquaintance and knowledge they had of him, they murdered him and a party of one and twenty men, who had gone ashore with him from their vessel at some place "about Patowomeke, but the name of the place they knew not." The remaining part of the crew, five in number, weighed anchor and returned home. All they could tell was,—that they heard a great noise among the savages on shore, and saw a man's head thrown down the bank, but how captain Spilman was surprised or slain they did not know. *Smith's Hist.* vol. ii. p. 95. It has been said, that this murder was committed by a tribe called the Pascoticons, and that governor Wyatt came shortly afterwards himself to the Patowmack and "took a severe revenge" on these Indians. *Burk's Hist. of Virg.* vol. i. p. 275. With these hostilities between the Virginians and the Indians on the Patowmack, all further traffic between them, prior to the arrival of governor Calvert, appears to have ceased, or no subsequent accounts thereof have reached us. It is probable, that Japazaw, the former king of the Patowomekes in 1623, was now dead, as the present Werowance, or king, was said to be an infant, who must have been either his son or his nephew; most probably the latter, agreeably to what is said to have been the Indian rule of descent as to their regal power. In either case it corroborates the opinion, entertained by some,—"*that the dignity of office of Sachem was hereditary,*" which has been denied by others. But, it is most probable, that this infant Werowance, or Sachem, was Japazaw's sister's son; for, although it appears from what has been before mentioned, that he had a son of his own, yet the descent to his nephew would be more in conformity to what is stated by Smith, as to the manner of government with the Virginia Indians, exemplified by him in the case of Powhatan,—"*whose kingdomes,*" he says, "*descended not to his sonnes nor his children, but first to his brethren, whereof he hath 3, namely, Opitchapan, Opechancanough, and Catataugh, and after their decease to his sisters. First to the eldest sister, then to the rest, and after them to the heires male or female of the eldest sister, but never to the heires of the males.*" The construction of this sentence made by Mr. Thompson in his note (5) to Jefferson's

Notes,—that these names “were appellations designating the tribes in the confederacy,—that those persons were not Powhatan’s real brothers, but the chiefs of different tribes, and that the Sachem or chief of the tribe seemed to be by *election*,”—appears to be repugnant to the latter part of the above quotation from Smith, which Mr. Thompson has not fully stated, having omitted the material word—“heirs,” &c., which, in the English language, here used by Smith, always intimates *inheritance* by blood. This rule of inheritance, spoken of by Smith as to Powhatan, is recognized also by Beverly, (who wrote when many tribes of Indians were still known as then existing in Virginia,—see his Hist. of Virg. p. 163,) as a general rule of inheritance among them as to their regal power. This he attributes to their *jealousy* of their wives, “always respecting the descent by the female as the surer side.” The same rule of inheritance is recognized also by William Penn, as prevalent with the Indians of Pennsylvania, when he first made his settlement there, for which he has assigned the same reason as Beverly. See Proud’s Hist. Pennsylv. vol. i. p. 257.

NOTE (III.) p. 30.

It said by Chalmers in his Annals, (ch. ix. p. 207,) where he speaks of the arrival of the Maryland colony, that “animated by very different principles, Calvert, their leader, pursued a very different conduct from those who first planted the shores of James river. *He purchased the rights of the aborigines for a consideration* which seems to have given them satisfaction; and with their free consent, in the subsequent March, he took possession of their town, which he called Saint Mary’s. Prudence as well as justice dictated the continuation of this salutary policy, with regard to that people; and, having carefully cultivated their friendship, he lived with them on terms of perfect amity, till it was interrupted by the interested intrigues of an individual,”—William Clayborne.

As philanthropists have been excessively clamorous in the praises of William Penn for his ostentatious purchase of the lands of the aborigines, particularly at the time of his supposed treaty with the Indians under the great elm at Shackamaxon, (so brilliantly illustrated by the pencil of his Britannic majesty’s historical painter,) it is here thought, that the conduct of Leonard Calvert, on a similar occasion, will not shrink from a comparison with that of William Penn. It will not be fully admitted, that William Penn or any other European colonist, or even the United States at this day, can with perfect honesty and integrity *purchase* the lands of the aboriginal natives of America; for several reasons;—first, it is not a clear proposition, that *savages* can, for *any consideration*, enter into a contract obligatory upon them. They stand by the laws of nations, when trafficking with the civilized part of mankind, in the situation of *infants*, incapable of entering into contracts, especially *for the sale of their country*. Should this be denied, it may be then asserted, that no *monarch* of a nation, (that is no *sachem*, chief, or head men, or assemblage of sachems, &c.) has a power to transfer by sale the country, that is, the soil, of the nation over which they rule. But neither did William Penn, make, nor has any other European since made, a purchase of lands from any tribe or nation of Indians through the agency of any others than their sachems or head men; who certainly could have no more right to sell their country, than any European monarch has to sell theirs. But should it be contended, that savages are capable of entering into contracts, and that their sachems have a power to transfer by sale the country of the people over whom they rule, it may be safely asked,—what could William Penn, or at least what did he give, which could be considered, in any point of view, as a consideration or compensation to those poor ignorant aborigines for their lands? If we are to follow Mr. West’s *imagination*, (in his celebrated picture of “Penn’s treaty with the Indians;”) for, history recognises no such treaty, and the late biogra-

pher of William Penn, (Clarkson,) fairly acknowledges, that "in no historian could he find any account of it;" but from "traditions in Quaker families," and "relations in Indian speeches," it might be inferred, that there was such a treaty; if then, the pencil of the artist is correctly warranted by "tradition," William Penn gave nothing more than some English *broad cloth*, or perhaps some beads or other trinkets, which might have been contained in the trunk displayed in the fore-ground of the picture, for all the lands, on which he built his city, including also a large portion of his province; and this he seems to have been induced to do, not from his own original perception of the justice of the thing, but, as he acknowledges in his letter to the lords of the council composing the committee of Plantations, dated August 14th, 1683, "that he might exactly follow the *bishop of London's* counsel, by buying, and not taking away, the native's land." (See this letter at length in Chalmers's *Annals*, ch. xxi. note 38.) Now, the presents of Leonard Calvert really seem to have been of greater value; for, besides *broad cloth*, history says, that he gave them "axes and hoes;" thereby endeavouring to introduce among them, as it were the first rudiments of civilization—the implements of agriculture. With this, it seems, they were as well satisfied to give up the lands of St. Mary's, as the Indians of Shackamaxon were to give up those where Philadelphia stands.

The foregoing remarks would, perhaps, not have been made, had they not been drawn forth by a part of a speech, which the before mentioned biographer of William Penn has dressed up for him, on the occasion of this celebrated treaty, entirely from "tradition," as he acknowledges, in which he makes him to say to the Indians;—"that he would not do as the *Marylanders* did, that is, call them children or brothers only; for, often parents were apt to whip their children too severely, and brothers sometimes would differ: but he should consider them as the same flesh and blood with the christians, and the same as if one man's body were to be divided into two parts." It is to be observed, that Penn had then but a few days prior to this supposed treaty returned from Maryland, whither he had gone on a visit to Charles, lord Baltimore, son and heir of Cecilus, to consult about the boundaries of their respective provinces, and where he had been "very kindly received, not only by his host, but by the principal inhabitants of the province." Setting aside this ungrateful return for the hospitality of the *Marylanders* just shewn to him, and notwithstanding these proprietaries could not agree about their bounds, there seems to have been, in the above mentioned insinuation, some small want of generosity, if not of humanity, in endeavouring to instil into the minds of the Indians prejudices against the *Marylanders*, who were certainly as much of "the same flesh and blood with the christians," as the Indians or Pennsylvanians were. Had he excited the Indians to war upon the inhabitants of Maryland, as he appears to have endeavoured to do, it would certainly not have comported with his *pacific* principles of christianity. But, notwithstanding the boasted effects of this celebrated treaty, it is to these "whippings" given by the *Marylanders* to their children—the Indians, together with the similar usage of them by the inhabitants of New York and Virginia, that the Quakers of Pennsylvania owe their *existence* as a colony, until through their *pacific* principles they were obliged to surrender up the affairs of their province into other hands.

NOTE (IV.) p. 30.

It is proper here to inform the reader, that in a few days after the *Maryland* colony had left Point Comfort in Virginia, the governor and council of that province, on the 14th of March, 1633-4, held a consultation concerning the mode of conduct they were to observe towards the *Maryland* colony. The result of this consultation, as it is published by Chalmers, in his *Annals*, ch. ix. note 17, from *Maryland Papers*, vol. 1, bundle C. is here subjoined.

"PRESENT,

Sir John Harvey, governor,	Capt. Clayborne,	Capt. Tho. Purfry,
Capt. John West,	Mr. Wm. Farrer,	Capt. Jos. Bullock,
Capt. Sam. Matthews,	Capt. John Uty,	Capt. Wm. Perry.

Captain William Clayborne requested the opinion of the board, how he should demean himself in respect of lord Baltimore's patent, and his deputies now seated in the bay; for that they had signified to captain Clayborne, that he was now a member of that plantation, and therefore should relinquish all relation and dependence on this colony. It was answered by the board, that they wonder why any such question was made; that they knew no reason why they should render up the rights of that place of the isle of Kent, more than any other formerly given to this colony by his majesty's patent; and that, the right of my lord's grant being yet undetermined in England, we are bound in duty and by our oaths to maintain the rights and privileges of this colony. Nevertheless, in all humble submission to his majesty's pleasure, we resolve to keep and observe all good correspondence with them, no way doubting that they on their parts will not entrench upon the interests of this his majesty's plantation."

It is probable, that the discontents, which had been excited in Virginia, principally on account of lord Baltimore's charter, together with the foregoing manifestation of the opinions of a majority of the provincial council of Virginia thereon: occasioned the following letter from the committee of the king's council, in England, for the colonies, to the governor and council of Virginia, published in Chalmer's Annals, (ch. v. note 16,) from Virg. Ent. 1 v. p. 211.

"After our hearty commendations: we have thought fit to let you know, that his majesty, of his royal favour, and for the better encouragement of the planters there, doth let you know, that 'tis not intended, that interests, which men have settled when you were a corporation, should be impeached, that for the present they may enjoy their estates with the same freedom and privilege as they did before the recalling of their patents; to which purpose also, in pursuance of his majesty's gracious intention, we do hereby authorise you to dispose of such proportions of lands to all those planters, being freemen, as you had power to do, before the year 1625. Whitehall, 22d July, 1634.

Manchester, Kelley, E. Newburg, T. Coventry,
F. Cottington, T. Germini, F. Windebank.

To our loving friends, the governor and council in Virginia."

Although this letter was written subsequent to governor Hervey's visit to St. Mary's, and probably did not arrive in Virginia until the autumn of this year 1634, yet, as it appertains to the events of the present year, and serves to demonstrate, that no invasion of any *individual* right of any Virginian was intended by lord Baltimore's grant, it is inserted in this place.

NOTE (V.) p. 35.

Supplementary to the before mentioned events of the year 1635, an incident of that time, apparently trivial, but, being connected with an awful misfortune, which the state of Maryland seems to be destined to experience at some future day, demands some notice. In a memorandum, (recorded in p. 37, of the oldest land record book of the province of Maryland, marked No. 1,) relative to "rights of land," accruing to those, who should bring in persons to settle in the province, agreeably to the first "conditions of plantation," prescribed by the lord proprietary, mention is made, that "*Francisco a molato* was brought in by Andrew White in the year 1635;" and right to land thereupon claimed. Subsequent entries of the same tenor appear in other parts of the land records; as "for transporting *negro* Phillis in the year 1648." (See Liber A. B. & H. p. 9.) It is an event, recorded by most of the historians of Virginia, that *negroes* were first imported or introduced into that province in the year 1620, by a *Dutch* ship bound

homeward from the coast of Guinea, from which the Virginia colonists bought twenty of that wretched race of people. It may be proper, however, to mention, that *Smith* (in his *Hist. Virg.* vol. ii. p. 391, edit. of 1819,) seems to have placed this event in the year 1619; where he states, under the date of 1619, as follows: "About the last of August came in a Dutch man-of-warre that sold vs twenty nagars." The example of a sister colony, so nearly situated to Maryland, would naturally be soon adopted by the latter. From the name "Francisco,"—it is probable, he was brought from the Spanish West Indies. The English, however, had commenced the slave trade, under a charter for that purpose from king James the first, as early as the year 1618; but, the profits not being found to answer expectation, the charter was suffered to expire. However, in 1631, when the English had begun the settlement of plantations in the West Indies, negroes being in much demand, a second company for the African slave trade was erected by Charles the first. (See *Edwards's Hist. of the West Indies*, B. 4, ch. 2.) So that the regular importation of negro slaves into Maryland might perhaps have been lawful, immediately in its first settlement in 1634. The importation of "Francisco" seems, to be the first notice *on record* of the introduction of this race of people into the province.

It may be further remarked, that if the "Conditions of Plantation," which are supposed to have been issued prior to the embarkation of the first colonists in 1633, were the same, at least as to this particular, as those subsequently issued in 1636, (which will appear in the proceedings of the next year,) the owner of "Francisco" was entitled to *one hundred acres of land* for his "transportation into the province," under the denomination of a "servant." This instance, and more particularly that of "Negro Phillis," seem to prove, that negroes were then considered more as legitimate *population* than property.

NOTE (VI.) p. 42.

The *first* commission *on record*, for organizing the government of the province: taken from the book entitled, "Council Proceedings from 1636 to 1657," p. 11.

"Cecilius, by the grant and ——— * of our sovereign lord Charles by the grace of God, of England, Scotland, France, and Ireland, king, defender of the faith, &c., absolute lord and proprietary of the province and country of Maryland in the parts of America, lord Baron of Baltimore, &c., to all and singular persons to whom this present writing shall come, greeting,—Know ye, that we, taking into our serious consideration the necessity of making a governor, appointing a council, and other officers, and establishing of laws proper and convenient for preservation of the peace, and support of the commonwealth of our province of Maryland, and likewise calling to mind the faithful and laudable service done by our dear brother Leonard Calvert, esqr., as well in the adventure of his person in the first descent and settling our colony there, as the ordering and advancing the same by his personal residence within the same our said province, wherein he hath manifested, to the satisfaction of our self and of our colony there, such wisdom, fidelity, industry, and other virtues as render him capable and worthy of trust, hereby by us intended to be reposed in him; and for divers other good causes and considerations us thereunto especially moving, have nominated, constituted, ordained, authorized, and established, and by these presents do nominate, constitute, ordain, authorize, and establish the said Leonard Calvert, in the absence of us and our heirs, our lieutenant general, admiral, chief captain and commander, as well by sea as land, of our said province of Maryland and the islands to the same belonging; and do, by these presents, give unto him the chief commandment and absolute authority about

Leonard Calvert constituted lieutenant general, admiral, &c.

* This and other blanks in this commission are so in the record.

and in all matters of warfare by sea and land, to execute and administer the same, to the resistance of the enemy or suppression of mutinies and insolencies, as our said lieutenant shall think most commodious for the preservation of our said province, and to do all such things as do belong or appertain to the office of a general, admiral, captain or commander: to have, hold, and enjoy, and administer the same, with such power and authority as any other lieutenant governor, general, admiral, captain and commander of any other province may, might, or ought by the law of arms to do, until we shall signify our pleasure to the contrary; And, therefore, we do hereby further ordain and command all captains ——— and soldiers, as well by sea as by land, whom it may concern, and all such as are and shall ——— of our council within our said province, all our officers, receivers, bailiffs, marshalls, magistrates, gentlemen, and all other inhabitants of our said province of what quality or condition soever, that they and every of them do acknowledge the said Leonard Calvert in the quality of our lieutenant general, admiral, chief captain, and commander of all our said province, and the islands and members of the same, and do honour, respect, and obey him, as they ought to do, upon pain of such punishment to be inflicted upon them and every of them, as such a high contempt shall deserve; And to the end that no man there shall pretend ignorance, we do command this our ordinance to be proclaimed and published within our said province at the places accustomed to proclaim and publish our edicts or ordinances, commanding him our said lieutenant to proceed with rigour against all contemners and neglectors of the same, according to the order of punishment before maintained without favour or ———; And we do further by these presents make, constitute, ordain, and establish the said Leonard Calvert to be our chancellor, chief justice, and chief magistrate within our said province, until we or our heirs shall signify the contrary under our hand and seal, and from time to time to appoint and constitute officers and ministers for the preservation of the peace, administration, and execution of justice, and for doing and executing of all other things whatsoever which belong to the establishing and governing of a good and happy commonwealth within our said province; And we do further give and grant to him our said lieutenant, chancellor, chief justice, and chief ——— full and absolute power and authority to assemble the freemen or their deputies at Saint Mary's within our said province upon the five and twentieth day of January next ensuing the date hereof, and then and there to signify to them, that we do disassent to all the laws by them heretofore or at any time made within our said province, as we do hereby declare them to be void; and further to shew unto them the draught or copy of all such laws and ordinances for the good government of our said province, as we shall before that time transmit to him our said lieutenant under our hand and seal, with our assent for enacting of the same; and likewise, if the said freemen or their deputies so assembled shall approve and consent unto all the said draughts or copies of the said laws and ordinances in manner as we send them over, to publish the same as laws under the great seal of our province, that the people and inhabitants of our said province may take the better notice thereof; And we do further by these presents give and grant unto him our said lieutenant like absolute power and authority, after the said assembly so called as aforesaid shall be by him dissolved, at all or any other time or times, when and as often as he shall think fit, to call or summon one or more general assembly or assemblies of the freemen within our said province, and to propound and prepare other wholesome laws and ordinances for the government and well ordering of the said province and people within the same, to be by us assented to and confirmed, if upon view and mature consideration had of the same, we shall in our judgment approve thereof; And we do by these presents give and grant full power and authority unto our said lieutenant to ad-

His power
and author-
ty.

This ordi-
nance to be
proclaimed
and publish-
ed.

Leonard Cal-
vert appoint-
ed chancel-
lor, chief jus-
tice, &c.

Power to call
an assembly.

To signify to
them his dis-
assent to the
laws hereto-
fore made by
them.

Power to the
governor to
call and dis-
solve assem-
blies.

Power to the governor to make ordinances, &c.
 journal and dissolve the said assembly so authorized to be called on the five and twentieth day of January next ensuing the date hereof as aforesaid, and all other assemblies by him hereafter to be called, at his pleasure ; And, forasmuch as the calling of a general assembly of the said freemen, and the consulting about and enacting of laws will require long time and much consultation, and many times sudden and other necessary occasions may happen or fall out, which require ——— a speedy remedy, We do, therefore, give and grant unto our said lieutenant full power and authority to make, constitute, ordain and publish in our name such reasonable and profitable ordinances, edicts, and proclamations, with reasonable pains and penalties therein to be expressed to be duly inflicted on all such offenders against the same as he our said lieutenant in his discretion shall think fit, Provided that such penalties do not extend to the taking away the right or interest of any person or persons of or in their life, members, or freeholds, goods or chattels ; All which ordinances, edicts, and proclamations shall stand in force only and until we or our heirs shall signify the contrary to him our said lieutenant general and the people there, or that he our said lieutenant shall in his discretion think fit to repeal the same ; And further we do hereby give and grant full power and authority to him our said lieutenant to appoint fit places for public ports for lading, shipping, unlading, and discharging all goods and merchandizes, to be imported or exported into or out of our said province, and to prohibit the shipping or discharging of any goods or merchandizes whatsoever in all other places or ports within our said province, and to appoint officers and ministers in the same places and ports, and also to erect and establish convenient places for the holding and keeping of fairs and markets, and to establish markets and fairs there to be held upon certain days for that purpose to be by him appointed ; And we do further by these presents give full power and authority to our said lieutenant, if he see cause, to pardon and remit, in part or in whole, all pains, forfeitures, and penalties, which any person or persons within our said province shall incur for any misdemeanor or offence against any of our laws, ordinances, or orders whatsoever, made or to be made for the good government of our said province, and to grant pardons to all and every such delinquents in our name under our great seal of our said province, so that such pardon or pardons extend not to the pardoning of high treason ; And further we do by these presents commit the custody and keeping of our great seal of our said province unto him our said lieutenant ; and we do hereby give and grant unto him our said lieutenant absolute power and lawful authority for us and in our name to pass and grant under the same our great seal all writs and processes, all commissions for the execution of justice and for dividing and bounding of lands, all pardons, licences, and all public acts and deeds whatsoever, which shall at any time pass within our said province ; and we do further hereby give full power and authority unto him our said lieutenant, for us and in our name, to pass and grant under our great seal to such person or persons such quantity of land within our said province for such estate and interest and with such privileges and immunities as we have or from time to time shall give him our said lieutenant for warrant under our hand and seal, all which grants, so to be made, passed, and granted, after the same grants and the said warrants under our hand and seal for the passing thereof, shall be enrolled by our secretary of our said province for the time being and not before, we will and do hereby declare shall be effectual in law against us, and shall bind us and our heirs as firmly as if we ourselves had been present and had affixed our great seal to such grant or grants in proper person ; And for the better assistance of him our lieutenant in the execution of the premises and of the charge by us committed to him we have appointed and ordained, and by these presents do appoint and ordain our well beloved Jerome Hawley, esqr., Thomas Cornwaleys, esqr., and John Lewger,

Power to him to appoint public ports.

To establish fairs and markets.

Power of pardon except for high treason.

Governor to be keeper of the great seal.

To make grants of lands.

Jerome Hawley,

gent: to be of our council of and within our said province, with whom our said lieutenant shall from time to time advise, as he shall see cause, upon all occasions concerning the good of our said province and of the people there; And we do hereby give and grant full power and lawful authority unto him our said lieutenant to inquire and determine, and finally to judge of and upon all causes criminal whatsoever, of what nature, kind, quality, degree, or condition soever the same shall be, which may ——— or arise within our said province, as fully and absolutely as if we ourself were personally present, to give sentence or judgment in or upon the same, (excepting only where the life or member of any person shall or may be inquired of or determined,) and to award execution upon every such sentence or judgment; and also to hear and determine all civil causes, actions, suits, and demands both in law and equity ——— concerning any goods, chattels, contracts, debts, demands, or other personal or mixt action or actions, suit or suits whatsoever, in the most summary and equal way that he may, according to the orders, laws, and statutes of that our said province already made and established, or hereafter to be made or established, and in default of such laws established or to be established within our said province, then according to the laws and statutes of the realm of England, as near as he may or can ——— and determine thereof, and where the life, member, or freehold of any person or persons shall happen to come into question within our said province we do hereby give and grant to him our said lieutenant *or** to such persons as we shall from time to time by our letters or any other warrant under our hand and seal nominate and appoint to be of our council within the said province, or to any three of them, whereof our said lieutenant always to be one, full power and authority to inquire and determine thereof according to the laws of our said province established or to be established, and finally to give sentence and judgment thereupon, and to award execution accordingly, and we do hereby for the better executing of the premises, and preservation of the records of all proceedings in the premises, appoint, constitute, and ordain the said John Lewger, as well to be our secretary and keeper of the acts and proceedings of our lieutenant and council for the time being, and for the doing and recording of all grants by us and our heirs to be made of any lands or offices within our said province, and of all matters and acts which by any instructions, laws, or ordinances made or given, or to be made or given for or concerning our said province, shall or ought by the appointment of us and our heirs, or by the appointment of our lieutenant or other chief governor for the time being, or otherwise to be recorded, as also our collector and receiver of all our rents, profits, and customs from time to time to be due or payable within the said province. And lastly, whereas our said lieutenant may [happen to die, or] hereafter, by absence out of our said province, not attend the said charge and trust hereby in him by us reposed, We do hereby give and grant unto him our said lieutenant full power and authority from time to time, in such cases of absence, [or death] to nominate, elect, and appoint such an able person inhabiting and residing within our said province, as he in his discretion shall make choice of and think fit to be our lieutenant general, admiral, chief captain and commander, as well by sea as land of our said province, [in as large and ample manner as we have by these presents authorized him our said lieutenant to govern for the present; And in case our said lieutenant shall happen to die or be absent out of our said province of Maryland, and shall fail to make choice of, nominate, and appoint some person to be our lieutenant general, admiral, and chief captain and commander of our said province, as aforesaid,]† We do hereby give and grant to

Thomas
Cornwaleys,
and John
Lewger,
appointed
councillers.

The governor
to be the
judge of cri-
minal causes.

To hear and
determine
civil causes.

Where the
life, member,
or freehold
come in
question, the
governor and
council to in-
quire and de-
termine.

John Lewger
appointed se-
cretary of the
province.

And register
of the land
office.

Also collec-
tor of the
customs and
receiver of
the quit-
rents.

Power to the
governor to
appoint a de-
puty in case
of his own
absence.

* Quere, if the word "or" here should not be "and." In the like paragraph in the commission of 1642, it is so expressed, and the sense seems to indicate, that it was so in the original.

† The preceding words, inserted between brackets, are not in this commission, as it now stands recorded, but, as the sense without them would be evidently imperfect, and a clause, to the same

our councillors there for the time being, or the greater part of them, full power and authority from time to time in every such case, to nominate, elect, and appoint such an able person inhabiting within our said province, as they or the greater part of them shall make choice of and think fit to be our lieutenant general, admiral, chief captain and commander as well by sea as by land of our said province and of the islands to the same belonging, which person to be chosen and appointed in either of the cases aforesaid,* We do hereby declare shall be our lieutenant general, admiral, chief captain and commander during the absence of our said brother our present lieutenant, or until we or our heirs shall constitute and appoint another lieutenant or governor of our said province, or otherwise determine the same, to which lieutenant general, admiral, chief captain and commander to be elected, nominated and appointed as aforesaid, we do hereby give and grant the like power and authority in all causes and things as we have by these presents given and granted unto our said brother, willing and commanding all our council, captains, soldiers, officers, ministers and people of our said province and all others whom it may concern to be obedient unto him in all things, matters, and causes as we have herein and by these presents commanded them to be obedient unto our said brother our present lieutenant general, admiral, chief captain and commander upon pain of such punishment to be inflicted upon them and every of them as such a high contempt shall deserve. Given under our hand and seal at London in the realm of England the fifteenth day of April in the year of our Lord God one thousand six hundred and thirty-seven.

Signed LEWGER.

LOCUS MAGNI



Sigilli.

Endorsement.—These are to authorize you to put our great seal for the province of Maryland to this our commission for the government there—15th of April, 1637.

Signed C. BALTIMORE.

To our secretary for the
province of Maryland. }

NOTE (VII.) p. 56.

This right of originating or propounding laws, as exercised in the English house of commons, is alleged by *De Lolme*, to be peculiar to the English constitution. (See his treatise thereon, B. II. ch. 4.) "In most of the *ancient* free states," he adds, "the share of the people, in the business of legislation, was to approve or reject the propositions which were made to them, and to give the final sanction to the laws. The function of those persons, or in general those bodies, who were intrusted with the executive power, was to prepare and frame the laws, and then to propose them to the people: and in a word, they possessed that branch of the legislative power which may be called the *initiative*, that is, the prerogative of putting that power in action." In a note to the preceding passage the author seems to explain his remarks therein, as being principally in allusion to the mode of legislation practised by the Roman republic; wherein all laws originated in the senate before they could be proposed to the *comitia* of the people for their assent. This seems, indeed, to have been the necessary result

purpose and nearly in the same words, is in the commission of 1642, (which will be exhibited in a subsequent part of this work under its proper date,) the preceding words in brackets, taken from the last mentioned commission, are here inserted, to render the above clause more intelligible.

* This *alternative* expression might possibly be referred either to the two cases of *absence* or *death*, or to the two modes of appointment, either by the lieutenant general or by the council; but the whole purview of the clause appears to indicate a reference to the two "cases" of *absence* or *death*, rather than the two modes of appointment; and therefore justifies the preceding insertion in brackets.

of the want of the principle of *representation*, confessedly the modern invention of the English. When all the citizens were to assemble, each in his individual capacity, to give his assent to a law, as they were both at Athens and at Rome, in the times of their republics, it became impossible to indulge every man in this right of propounding his own scheme of a law. The Athenian and Roman senates, therefore, exercised the power of propounding the laws, which the people were either to affirm or reject.

Most of the *modern* republics also, (according to this ingenious writer,) are or were deficient in this great popular privilege. At Venice the Senate, (which was composed of a choice few of the nobles,) exercised the exclusive power of proposing the laws to be enacted by the grand council or assembly of the nobles. In the Canton of Berne, all propositions must be discussed in the little council, which is composed of twenty-seven members, before they are laid before the council of the two hundred, in whom resides the sovereignty of the whole Canton. And in Geneva, the law is, (according to *De Lolme*,) "that nothing shall be treated in the general council or assembly of the citizens, which has not been previously treated and approved in the council of the two hundred; and that nothing shall be treated in the two hundred, which has not been previously treated and approved in the "council of the twenty-five." (See also Coxe's *Travels, or Letters on Switzerland, Lett. 64.*)

Although the monarchical republic of England may thus proudly boast of a pre-eminence in establishing and cherishing, in the popular branch of its constitution, this most essential principle of political liberty, beyond that of all other republics, ancient or modern, yet it appears, that at some unfavourable periods of her history, she exhibited some symptoms of desire to exclude it from her colonial system of government. A great portion of Ireland might, without doubt, be considered as a *colony* of England. The original natives of Ireland, prior to the conquest of that country by the English, were in a state of perfect barbarism; and knew no more of the institutions of a free government, than the Indian tribes of America, living like them in clans or bands under the arbitrary and tyrannic sway of some one chieftain; who had the power of life and death, according to his own will. After the conquest, and as soon as the English had colonized all Leinster and the greatest part of Munster, (forming a portion of the island commonly termed the *English Pale*,) the government of England, in whom the supremacy of Ireland became vested, constituted parliaments therein, as a natural concomitant with their colonists. To be governed by the laws of a parliament, and to renounce their barbarous *Brehon* laws, was considered by the native Irish as a grievous calamity. The English colonists there also, in process of time, began to experience some oppression and inconvenience resulting from the frequency of parliaments unnecessarily called by some of the lords lieutenants. To throw difficulties in the way of calling a parliament, as also to limit the power of an Irish governor or lord lieutenant, they obtained, in the reign of Henry the seventh, an Irish statute, made by their own parliament, (10 *Hen. 7th*, commonly called sir Edward Poyning's law,) which was enacted, (as the statute itself expresses,) "at the request of the commons of the land of Ireland," by which, "No parliament was to be holden thereafter in the said land, but at such seasons as *the king's lieutenant and council* there first do certify the king under the great seal of that land, the causes and considerations and *all such acts*, as them seemeth should pass in the same parliament, and such causes, considerations, and acts, affirmed by the king and his council," (in England) "and his license thereupon, as well in affirmation of the said causes and acts, as to summon the said parliament had and obtained. (See Leland's *Hist. of Ireland*, vol. 2, p. 108, and the Appendix thereto, and 4 *Inst.* 352.) It is true some differences took place between the Irish house of peers and the lord lieutenant of that king-

dom, about the time of the first emigration to Maryland, (1634,) relative to a conjoint right, which the Irish peers claimed, of originating laws to be "certified" to the king of England, for his approbation, with the lord lieutenant and his privy council. (See Leland's Hist. of Ireland, vol. 3, p. 20.) But in either event of this question in Ireland, the royal prerogative of first assenting to any proposed bills, before they could be *propounded* to the immediate representatives of the people, the Irish house of commons, seemed to afford sufficient analogy to authorise lord Baltimore, (being an Irish peer, and claiming palatinate *regalia* over his province of Maryland,) in contending for the like prerogative of *initiating* and propounding the laws to be enacted by his provincial assembly in Maryland. The mode of legislation prescribed by the first and second charters of Virginia, for that colony, seems also to have afforded a precedent for his lordship's construction of his prerogative. By those instruments of grant, the powers of both originating and enacting laws for the government of Virginia, were exclusively vested in the king and his *council of Virginia* in England. It is true, that in the year 1620, (when the first legislative assembly of Virginia is said to have been holden,) they appear to have originated certain laws, which they transmitted to the treasurer and company of England for their assent; and probably ever afterwards continued to exercise that right. The primitive colonial policy in England, however, was at least to originate all laws, if not to legislate entirely for the colonies. Nor has lord Baltimore been singular in these ideas of his powers. In the year 1678, a new system of legislation was adopted for the island of Jamaica, founded nearly on the model of the Irish constitution under Poyning's act; and the earl of Carlisle was appointed chief governor for the purpose of enforcing it. A body of laws was prepared by the privy council of England; which his lordship was directed to offer to the assembly, requiring them to adopt the whole code, without amendment or alteration. In future the heads of all bills (money bills excepted) were to be suggested in the first instance by the governor and council, and transmitted to his majesty to be approved or rejected at home; on obtaining the royal confirmation, they were to be returned under the great seal in the shape of laws, and passed by the general assembly; which was to be convened for no other purpose than that, and the business of voting the usual supplies; unless in consequence of special orders from England. On his lordship's arrival in Jamaica he called an assembly and propounded to them the laws, according to his instructions; but they were rejected by the assembly; not so much, as it appears, from any special objections to the particular laws themselves, as generally to manifest their indignation at this colonial mode of legislation. The assembly persisting with perseverance in their rejection of any laws thus made, and the governor reporting their proceedings to the king and council in England, it appears to have occupied the attention of "the committee of trade and plantations" for several years; but, after referring the subject to the opinions of the attorney and solicitor-general, who, on account of its difficulty, advised a reference of it to all the judges of England, it was finally, in the year 1680, abandoned, and the assembly left to enjoy their former method of legislation. (See Edwards's Hist. of the West India, vol. 1, p. 186, and the Hist. Account in the appendix thereto.)

It deserves remark, that the form of government framed by the justly celebrated Mr. *Locke* for Carolina, in the year 1671, provided, "that no matter should be proposed in parliament," (that is, in the assembly consisting "of all the proprietors, the landgraves, the casiques, and one commoner from each precinct sitting in one room, each man having one vote,) "that had not previously been prepared and passed by the grand council;" in whom the executive power was placed. (See Williamson's Hist. of North Carolina, vol. 1, p. 108-9.)

William Penn also, whose character has been assimilated to that of Lycurgus,

the celebrated Spartan lawgiver, prescribed in his first frame of government for his Pennsylvania colonists, in 1682,—“That the governor and provincial council should prepare and *propose* to the general assembly, *all bills*, which they should at any time think fit to be passed into laws, within the said province; which bills should be published thirty days before the meeting of the general assembly, in order to the passing them into laws, or rejecting of them, as the general assembly should see meet.” Accordingly, at the meeting of the first assembly held, (in 1683,) under this constitution, this modern Lycurgus, (for he was then present in his province, and acted as governor thereof,) propounded to the assembly two bills, the principles of which he must certainly have borrowed from the Spartan legislator; one was—“that young men should be obliged to marry at or before a certain age;” and the other,—“that two sorts of cloaths only should be worn; one for winter, and the other for summer.” The historian does not say, whether they were passed into laws, or not. Perhaps their absurdity was too glaring to admit them. See Proud’s Hist. of Pennsylvania, vol. 1, p. 238.

NOTE (VIII.) p. 64.

According to Chalmers, (see his Annals, ch. ix. note 21,) among the same papers in the plantation office, before cited by him, (viz. Hist. Virg. Pap. 75 B. p. 139,) there is a copy of an *indictment* against Clayborne, and of the *inquisition* finding the forfeiture of his estate. It is, however, probable that the *indictment* referred to by him is only a copy of one of those herein before stated, in which Clayborne is charged as an accessory. As to the *inquisition*, I find among our records, (see an old thin book, with leather cover, entitled, “Council Proceedings from 1637 to 1644,”) the following writ:—“Cecilius, &c. to the sheriff of the isle of Kent, greeting; we command you to seize to our use all the goods and chattels of William Clayborne, gent., within that island; and that you keep them in safe custody, until you shall have further order from us therein. Given at St Mary’s March 27th, 1638.” N. B. It appears from a commission, recorded in the same book, and in “Council Proceedings from 1636 to 1657,” p. 25, that John Langford was both the sheriff and coroner of the isle of Kent at this time; but no return appears, as I could find, to the foregoing writ. The following return, however, relative to Clayborne’s property, I find made, as the record expresses it, “by *serjeant* Vaughan, meaning, as it would seem, Mr. Robert Vaughan, before mentioned, p. 45, who was, as the commission there referred to styles him, “serjeant of the trained band,” at St. Mary’s. It is probable that military force had been thought necessary for the seizure of Clayborne’s property, and that Vaughan, as an officer, had been sent for that purpose, and made the return here stated, to wit:

“June 20th, 1638.—By virtue of a warrant to me directed I have seized into the lord proprietary’s hands, these goods and chattels belonging to captain Clayborne *within Palmer’s island* ;” viz.—“Edmund Griffin, William Jones, William Freeman, Richard Seymoure, servants.” Then follow, in the schedule, a list of some live stock, plantation utensils, and some household goods,—also, “six yards of *peake*, and one yard and a half of *roanoke*.” To the foregoing is added a schedule also of “Thomas Smith’s goods, of Kent ;” signed “Robert Vaughan.”

It may be proper, perhaps, to state in explanation of the above, that “*Palmer’s island*” is situated at the mouth of the Susquehanah, whereon Clayborne had made a settlement, or erected a trading house, at the time he made his other settlements on the isle of Kent, and prior to the arrival of the first Maryland colonists. The terms *Peake* and *Roanoke* will be explained hereafter in note (XVI.)

NOTE (IX.) p. 67.

This is so stated in “The Landholder’s Assistant,” (p. 93;) a work of authenticity, published by Mr. Kilty who was then register or clerk of the land office

of Maryland. He seems to "infer, that these *baronies* were divisions for *feudal*, as counties and hundreds were for *political*, purposes." But, as before stated in a former edition of this part of our history, there are strong and probable grounds to believe, that the before mentioned "Bill for Baronies" contemplated a civil division of counties similar to that adopted in Ireland; where, it seems, the word *barony* is used as synonymous to that of *hundred* in England. This appears from one or two law authorities. In *Spelman's Glossary*, (published about the year 1626,) verb *Baronia*, is the following passage. "*Baronia pro parte comitatus quam hundredum dicimus. Sic frequens in Hibernia, ubi connacia provincia sub nostra memoria in comitatus dispartita est; comitatusque deinceps in baronies dissecti, ut nuper etiam in ultonia factum intelligo.*" *Sullivan* also, in his law lectures, (see Lect. 26,) states, that even at this day those divisions of a county, which in England are called *hundreds*, are in Ireland called *baronies*. Lord Baltimore, being an Irish peer, might have directed, in this respect, the mode of colonization then recently adopted in Ireland during the preceding reign, to be pursued in his colony. An additional argument against the supposition, that this "bill for baronies" was intended in a *feudal* sense, seems to arise from the proviso annexed to the clause in the charter, which authorises the lord Baltimore to confer titles and dignities,—“so that they be not such as are now used in England.” *Baronies*, in a *feudal* sense, would imply, that the grantees, or lords thereof, would be called *barons*,—a "title and dignity then used in England," and, therefore, incompatible with the charter. This may afford a reason, perhaps, why no grant of a barony, even should the contemplated division have been intended in a *feudal* sense, is to be found among our records, and possibly also, why no act of assembly was renewed with a similar title. But the more probable purport of the act may be supposed to have been, to use the word *barony* as synonymous to the word *hundred*, though subsequently the word *hundred* was adopted, as being more consonant with the common law of England, which was deemed to extend to the province.

Chalmers, in his *Annals*, (ch. ix.) the principal writer referred to in the text, states that "the province was divided into baronies and manors; the *privileges* of which were carefully regulated." The charter authorised lord Baltimore "to erect any parcels of land within the province into manors, and in every of those manors to have and to hold a court baron, and all things which to a court baron do belong; and to have and to keep view of frank pledge, for the conservation of the peace and better government of those parts, by themselves and their stewards, or by the lords, for the time being to be deputed, of other of those manors when they shall be constituted, and in the same to exercise all things to the view of frank pledge belonging." In pursuance of this clause in the charter, several bills, relative to *manors*, appear in the list of bills passed at this session of 1687–8; to wit,—“A bill for bounding of manors; a bill for assigning of manors; a bill for the peopling of manors; a bill for the supporting of manors; a bill against aliening of manors; and a bill for services to be performed for manors and freeholds.” From these titles only, it would seem, Mr. Chalmers has inferred, that the "privileges" attached to manors "were carefully regulated." Although the lord proprietary made several grants of manors within this province, in pursuance of the before mentioned clause in his charter, yet it does not appear, that any very substantial *privileges* were ever exercised by the grantees thereof, as lords of those manors. The court held under the commission before stated, (p. 19,) "to certain justices of the peace on the isle of Kent to hold a *court leet*" there, seems to have partaken more of the nature of what was subsequently called a county court, than a court appertaining to a manor; and "the manor of Kent fort," the only manor ever erected on the isle of Kent, was not then granted. However, it does appear, that at subsequent periods of time, one or

two rare instances occurred of the holding both courts baron and courts leet in two distinct manors. "A court baron was held at the manor of St. Gabriel, on the 7th of March, 1656, by the steward of the lady of the manor, when one Martin Kirke took of the lady of the manor in full court, by delivery of the said steward, by the rod, according to the custom of the said manor, one messuage, &c., lying in the said manor, by the yearly rent of, &c., and so the said Kirke, having done his fealty to the lady, was thereof admitted tenant." (MS Extracts from the records.) This seems to have been conformable to the ancient practice of courts baron in England, on the *admission* of any tenant of a manor. The steward thereof, taking hold of one end of a rod and the tenant of the other, the former repeats to him;—"The lord of this manor by me his steward doth hereby deliver you seisin *by the rod*, and admit you tenant to the premises," &c. (See the Practice of Courts Leet and Courts Baron, by chief justice Scroggs.) Also, "in October, 1661, Thomas Gerrard petitioned to the provincial court, stating, that at a *court leet* and *court baron*, held for the manor of St. Clements, on the 27th of October, 1659, Robert Cole was *fined*, for marking one of the lord of the manor's hogs, and prayed to have satisfaction for the unlawful marking and killing such hog, as the laws of the province provided." The grant of this manor, which lay in St. Mary's county, was made to Thomas Gerrard in the year 1639, and appears to be one of the oldest grants of a manor now extant on the records of the province. It contained a clause of power to Thomas Gerrard to hold a court baron and court leet. The last mentioned case, which occurred in this manor, seems to have been one of those petty misdemeanors, which would have been properly cognizable by a court leet in England; but, as the lord of a manor could not be a judge in his own case, for a trespass to himself, (see 2 *Bac. Abr.* 505,) this principle probably occasioned his application, as above, to the provincial court.

Few, if any, other *privileges* attached to manors in England, appear to have been exercised in Maryland by the grantees of manors. *Fines* for alienation, and *escheats* for want of heirs, are well known to have usually gone to the lord proprietary of the province, and not to the lords of the manors. It was decided indeed, by the provincial court in 1648, in a particular case, (which is recorded in "Council Proceedings from 1636 to 1657," p. 215, and also stated in *Kilty's Landholder's Assistant*, p. 104,) that *forfeitures* for treason or "rebellion" appertained to the lord of the manor; but the legality of this decision might well be questioned, since *forfeitures* for treason were prior to the introduction of feudal tenures in England, and paramount to the right of the lord of a manor by escheat upon an attainder or conviction of a *felon*, which formerly included that of a *traitor*; (see 2 *Bl. Com.* 251;) and, therefore, among the bills of the next session following that last mentioned in the text, to wit, that of 1638-9, is one entitled, "an act for treasons," by which the offender was "to forfeit all his *lands*, *tenements*, *goods*, &c. to his lordship;" as will be hereafter more fully stated. It would appear also, that even in cases of treason *against the king*, under the statute of 25 *Ewd.* 3, and not under the act of assembly just mentioned, the lord proprietary of the province would have been entitled to the forfeiture accruing on the commission of all treasons within this province. For, the lord proprietary, by his charter of *grant* from the king was to have "all and singular such and as ample rights, prerogatives, royalties, royal rights, and temporal franchises whatsoever, within his province, as any bishop of Durham within his county palatine ever had;" and it seems, from *Darey's* case, (stated in 1 *H. H. P. C.* 254, 359,) that a bishop of Durham had by the *common law*, in virtue of his palatinate *regalia*, a right to all forfeitures for treason within his county palatine. These forfeitures also for *felony*, as well as treason, appertained to the lord proprietary and not to the lords of manors granted by him to individuals, unless a particular clause in

such grant of a manor specifically conveyed to the grantee a right to such forfeiture, (see 2 *Bac. Abr.* 577.) Accordingly, in instructions from the proprietary to the governor and council, dated 29th September, 1659, where a question is stated to have been raised,—“Whether *felon's goods* are not included in or under these words in a grant of a manor, (“profits most usually belonging to manors in England:”) lord Baltimore says, that “felon's goods are not profits either most usually or at all belonging to any manor in England by virtue of its being a manor, but is and must be *granted* by especial favour and special words, and is many times granted to *some* in other men's manors.” (See *Killy's Landholder's Assistant*, p. 104.) Lord Baltimore had, most probably, the advice of good counsel in England on this point.

NOTE (X.) p. 70.

The following is a copy of Clayborne's petition, as it appears on our records, with the immediate proceedings of the council thereon. Why so imperfect a copy of it was placed there, is not easily to be accounted for at this day. It is probable, that the book, from which the transcript was made into that in which it now remains recorded, was one of those, which were seized and embezzled, or *defaced* by Clayborne's party in 1644, as before mentioned. The blank spaces are so in the record. See the volume in the council chamber entitled, “Council Proceedings from 1636 to 1657,” p. 4.

“The petition of captain William Clayborne on the behalf of himself and partners to the king shewing;

That the petitioners by virtue of a commission under his majesty's hand, &c., divers years past, discovered and did then plant upon an island in the great bay of Chesapeake in Virginia by them named the isle of Kent, which they bought of the kings of that country, and built houses, transported cattle, and settled people thereon, to their very great costs and charges, which the lord Baltimore taking notice thereof, and the great hopes for trade of beavers and other commodities like to ensue by the petitioners' discoveries, hath since obtained a patent from your majesty comprehending the said island within the limits thereof, and sought thereby to dispossess the petitioners thereof, and debar them of their discovery, &c. Complaint thereof being made, your majesty was pleased to signify your royal pleasure by letter, intimating that it was contrary to justice and the true intent of your majesty's grant, to the said lord ———, that notwithstanding the said patent the petitioners should have freedom of trade, requiring the governor and all others in Virginia to be aiding and assisting unto them, prohibiting the lord Baltimore and all other pretenders ——— him to offer them any violence, or to disturb or molest them in their ——— plantation, as by your majesty's letter annexed appeareth; since which ———* be it your ——— majesty's said royal pleasure hath been made known to Sr. ——— governor of Virginia, (who slighted the same,) as also to the lord Baltimore ——— agents there, yet they have in a most wilful and contemptuous manner disobeyed the same and violently set upon your petitioner's pinnaces and boats ——— goods to trade, and seized them, and do still detain the same by the ———, of which pinnaces and goods the inhabitants within the said isle were ——— so great famine and misery as they became utterly destitute of any corn ——— sustain themselves, which enforced them to send a small boat ——— why they obeyed not your majesty's said royal letters and commands ——— the said pinnace and goods to enable them to trade for corn ——— boat approaching near unto some vessel of the said lord Baltimore's ——— agents, they shot among the petition-

* It may be supposed, that the obsolete adverb, “Albeit,” was here intended, which is synonymous to the word—“although.”

er's men and slew three of them and ——— more, and not content with these great injuries the said lord Baltimore and his agents have openly defamed and unjustly accused the petitioners of ——— crimes, to his exceeding great grief, which hath caused him purposely ——— —pair into this kingdom, and humbly prostrates himself and his cause ——— majesty's feet to be relieved therein.

And the petitioners having likewise discovered ——— plantation and factory upon a small island in the mouth of a river at the bottom of the said bay in the Susquehannock's country, at the Indians' desire and purchased the same of them, by means whereof, they are in great hopes to draw thither the trade of beavers and fur, which the French now wholly enjoy in the Grand Lake of Canada, which may prove very beneficial to your majesty and the commonwealth, but by letter now from thenceforth your petitioner is advised, that the lord Baltimore's agents are gone with 40 men to supplant the petitioners' said plantations, and to take possession thereof, and seat themselves thereon.

And the petitioner being desirous to propose a way, whereby your majesty may receive to the crown for plantations an annual benefit—be certain to enjoy the same with the fruits of their labours, they offer unto your majesty £100 per ann. viz. £50 for the said isle of Kent, and £50 for the said plantation in the Susquehannock's country, to have there 12 leagues of land, &c., from the mouth of the said river on each side thereof down the said bay southerly to the seaward and so to the head of the said river and to the Grand Lake of Canada, to be held in fee from the crown of England, and to be yearly paid unto your majesty's exchequer, to be governed according to the laws of England, with such privileges as your majesty shall please to grant, by which means your majesty may raise a great revenue annually, and all planters will be encouraged to proceed cheerfully in their designs.

And the petitioners having now a ship ready to depart with goods and people for the prosecution and managing of their said discoveries and trade, which without speedy supply and your majesty's favour, &c., is like to come to ruin.

May it therefore please your majesty to grant a confirmation of your majesty's said commission and letter under your majesty's broad seal for the quiet enjoyment of the said plantations, &c., to send now with the said ship, and to refer the speedy examination of the said wrongs and injuries unto whom your majesty shall please to think fit, to certify to your majesty thereof, and that your petitioners may proceed without interruption of the lord Baltimore's agents."

[Immediately following the foregoing petition, there appears on our provincial records the following entry; which is probably a copy from the proceedings of the privy council in England.]

"At the court at New-market, the 26th of February, 1637.

His majesty approving the proposals made in this petition for the advancement of those plantations and the hopeful trade of furs, is graciously pleased to confirm what was contained in his former commission and letter under the broad seal, and to that end referreth to the lord archbishop of Canterbury, lord keeper, lord privy seal, and any other the commissioners for plantations, who shall be near at hand and whom they please to call, the consideration of all the contents of this petition, and with Mr. Attorney's advice to settle such a grant of the things herein desired, as they shall think fit to be prepared by him for his majesty's signature. Their lordships are also to examine the wrongs complained of, and certify his majesty what they think fit to be done for redress hereof.

JOHN COOKE,
EXD. T. MEAUTYS.

We appoint the first council day after Easter for the hearing of this business at the council board, and do hereby will and require, that present notice be given to the lord Baltimore or any else whom it may concern, together with a true copy

of this petition and reference, and that they, by themselves or counsel, fail not to attend accordingly.

WM. CANT,
THOS. COVENTRY,
W. MANCHESTER.

NOTE (XI.) p. 72.

Reports of the lords commissioners for plantations, to whom Clayborne's petition was referred :

At Whitehall, 4th of April, 1638.

PRESENT,

Lord Archbishop of Canterbury.

Lord Keeper,
Lord Treasurer,
Lord Privy Seal,
Earl Marshall,
Earl of Dorset,

Lord Cottington,
Mr. Treasurer,
Mr. Comptroller,
Mr. Secretary Cooke,
Mr. Windebank.

Whereas a petition was presented to his majesty by captain William Clayborne, on the behalf of himself and partners, shewing, that, by virtue of a commission under his majesty's hand and signet, they, divers years past, discovered and planted upon an island in the great bay of Chesapeake, in Virginia, named by them the isle of Kent, whereupon, as they pretended, they had bestowed great charges ; and that the lord Baltimore, as they alleged, taking notice of the great benefit that was likely to arise to them thereby, obtained a patent from his majesty, comprehending the said island within the limits thereof ; and that they had likewise settled another plantation upon the mouth of a river in the bottom of the said bay, in the Susquehanough's country, which the said lord Baltimore's agents there, as they allege, sought to dispossess them of, pretending likewise great injuries and violence offered to them in their trade and possessions in those parts by the said agents, in killing some of the said captain Clayborne's men and taking their boats, contrary to the said commission and the express words of a letter from his majesty under his hand and signet ; and therefore besought his majesty to grant to the petitioners a confirmation, under the great seal, of his majesty's said commission and letter, for the quiet keeping, enjoying, and governing, of the said island, plantation, and people, with other additaments of lands and immunities in those parts ; and likewise that his majesty would refer the examination of the said wrongs and injuries to such as his majesty should think fit, as by the said petition more at large appeareth. Forasmuch as his majesty was pleased, at New Market, on the 26th of February, 1637, to refer the consideration of the petitioners' request unto the lord archbishop of Canterbury, the lord keeper, the lord privy seal, and any other the commissioners for plantations, who should be near at hand, and whom they pleased to call, and with all to advise with Mr. Attorney General, for preparing and settling the grant desired for his majesty's signature, and to examine the wrongs complained of, and to certify his majesty what they thought fit to be done for redress thereof. Whereupon all parties attending their lordships this day, with their counsel learned, and being fully heard, the said commission and letters being likewise read, it appeared clearly to their lordships, and was confessed by the said Clayborne himself then present, that the said isle of Kent is within the bounds and limits of the lord Baltimore's patent, and that the said captain Clayborne's commission, (as it likewise appeared,) was only a license, under the signet of Scotland, to trade with the Indians of America, in such places where the said trade had not formerly been granted by his majesty to any other ; which commission, their lordships declared, did not extend nor give any warrant to the said Clayborne or any other, nor had they any right or title thereby to the said island of Kent, or to plant or trade there, or in any other parts or places with the Indians or savages within the precincts of the

lord Baltimore's patent. And their lordships did likewise declare, that the aforesaid letter, under his majesty's signature, which had reference to the said commission under the signet of Scotland, was grounded upon misinformation, by supposing that the said commission warranted the plantation in the isle of Kent, which (as now appears) it did not. Whereupon, as also upon consideration of a former order of this board, of the third of July, 1633, wherein it appeared, that the differences now in question being then controverted, the lord Baltimore was left to the right of his patent, and the petitioners to the course of law; their lordships having resolved and declared as above said the right and title to the isle of Kent and other places in question to be absolutely belonging to the said lord Baltimore; and that no plantation or trade with the Indians ought to be within the precincts of his patent without license from him; did, therefore, think fit and declare, that no grant from his majesty should pass to the said Clayborne or any others, of the said isle of Kent or other places within the said patent; whereof his majesty's attorney and solicitor general are hereby prayed to take notice. And, concerning the violences and wrongs, by the said Clayborne and the rest complained of, in the said petition to his majesty, their lordships did now also declare, that they found no cause at all to relieve them, but do leave both sides therein to the ordinary course of justice.

EXT. T. MEAUTYS.

N. B. The foregoing *report* is recorded in a book in the council chamber of Maryland, entitled, "Council Proceedings from 1636 to 1657," p. 8. A copy of it is also published in *Hazard's Collections*, vol. 1, p. 130, purporting to be from "Votes of Assembly of Pennsylvania;" and by Mr. *Chalmers* in his *Annals*, ch. ix. note 25, which, as he states, was taken "from Maryland Papers, vol. 1, bundle C." in the plantation office, England. This copy published by Mr. *Chalmers* does not vary from either of the other copies in any material sentence or word, except only in the date of the *year*, which he states to have been, "the 4th of April, 1639," instead of "the 4th of April, 1638," as in the two former copies. Some further comments on the *variance*, as well as on the *authenticity* of the above report, will be found in the next note but one at the end of this volume. See note (XIII.)

NOTE (XII.) p. 72.

The following letter or order, from Charles I. to lord Baltimore, is copied from *Chalmers's Annals*, ch. ix. p. 23, who states it as taken from "Maryland Papers, vol. 1, bundle C," in the plantation office, England.

"*Charles Rex.—Right, trusty, &c.* Whereas formerly, by our royal letters to our governor and council of Virginia, and to others, our officers and subjects, in these parts, we signified our pleasure, that William Clayborne, David Morehead, and other planters in the island near Virginia, which they have nominated Kentish island, should in no sort be interrupted in their trade or plantation by you, or any other in your right, but rather be encouraged to proceed cheerfully in so good a work; we do now understand, that though your agents had notice of our said pleasure, signified by our letters, yet, contrary thereto, they have slain three of our subjects there, and by force possessed themselves by right of that island, and seized and carried away both the persons and estates of the said planters. Now, out of our royal care to prevent such disorders, as we have referred to our commissioners of plantations the examination of the truth of these complaints, and required them to proceed therein according to justice; so now, by these particular letters to yourself, we strictly require and command you to perform what our former general letter did enjoin, and that the above named planters and their agents may enjoy, in the mean time, their possessions, and be safe in their persons and goods there, without disturbance or farther trouble by you or any of yours, till that cause be decided. And herein we expect your ready conformity, that we

may have no cause of any farther dislike. Given under our signet, at our manor of Greenwich, the 14th day of July, in the 14th year of our reign, 1638."

NOTE (XIII.) p. 78.

From a provincial record-book in the council chamber of Maryland, entitled "Council Proceedings from 1636 to 1657," p. 319.

"By the governor and captain general of Virginia, with the advice and consent of the council of state,

A PROCLAMATION.

Whereas the king's most excellent majesty was pleased, by his letters-patent, to grant unto the right honourable the lord Baltimore, a territory or tract of land therein nominated and now known by the name of the province of Maryland, with divers franchises and immunities thereunto belonging as in and by the said letters-patent more at large appeareth; notwithstanding which said royal grant and publication thereof in this colony, divers persons, ill-affected to the government established by his majesty both here and in the said province, have by pretence of a former commission, factiously combined to disturb the said lord Baltimore in the possession of part of his said territory, as also to infringe the privilege of trade, in express terms solely granted to the said lord Baltimore within the said province, and, after many violent and disorderly courses, the said pretenders have so far proceeded as to petition his majesty, that part of the said province, now known by the name of the island of Kent and Palmer's island, with the trades thereof, might be confirmed to them, the consideration of which, their said petition, his majesty was pleased to refer to the most reverend and right honourable the archbishop of Canterbury, the lord keeper, the lord privy seal, and any others, the commissioners for plantations, who should be near at hand, and whom their lordships were pleased to call: Whereupon, their lordships meeting, after a full hearing of both sides, the said pretender's commissions being likewise read, their lordships did declare, the right and title to the isle of Kent and other places in question to be absolutely belonging to the lord Baltimore, and that no plantation or trade with the Indians ought to be within the precincts of his patent without licence from him, as in and by the order of their lordships more at large appeareth: These are, therefore, for the future preventing of further mischiefs and injuries, which may arise from ignorant mistakes or presumptions and pretences as formerly, in his majesty's name to prohibit all persons being or inhabiting, or which shall hereafter be and inhabit within the government of this colony, by themselves or others, either directly or indirectly, from the date of these presents, to use, exercise, or entertain any trade or commerce, for any kind of commodity whatsoever, with the Indians or savages inhabiting within the said province of Maryland, viz. northward from the river Wiconowe, commonly known by the name of Onancock on the eastern side of the grand bay of Chesapeake, and northward from the river *Chinquack* called great Wicocomico, on the western side of the said bay; and for the better regulating of all trades within the said colony, it is further hereby commanded, that no persons shall resort unto the habitations of the aforesaid Indians, without license first obtained for their so doing from the lord Baltimore or his substitute, upon forfeiture of the goods and vessels, or the full value of them, which shall be lawfully evicted to be traded or employed contrary to the premises, with such further punishment by imprisonment of the party or parties, offending against the true intent and meaning of the said proclamation, as shall be thought fit by the government and council.—Given at James city, the 4th of October, *Anno Regni Regis Caroli decimo quario, Anno. Domi. 638.* God save the king.

Vera Copia.—RICHARD KEMP, *Secretary.*"

The date of this proclamation refutes the supposition of Mr. Chalmers, before alluded to, that the decision of the lords commissioners was not made until the year 1639; as it expressly states, in the preamble of it, the petition of Clayborne, and the reference to and the decision of the lords commissioners. It will be observed, that the date of this proclamation, as to *the year of the king's reign*, being expressed in words, precludes the supposition, that 1638, in figures, was wrote for 1639. Counting *from* the 27th of March, 1625, when king James died and Charles acceded to the throne, it would make the fourth of October in the *fourteenth year of his reign* necessarily to have been in the year sixteen hundred and thirty-eight. Additional proof also, that this decision of the lords commissioners was in 1638, and not in 1639, arises from an act of assembly or bill, passed at the very next session, on the first of March, 1638-9, entitled, "an act for trade with the Indians," which, see at large in the second chapter of this work. This act expressly recites the aforesaid decision and order of the lords commissioners in Clayborne's petition, as "bearing date at Whitehall, the 4th of April, 1638;" which it could not possibly have done, had the decision or order been on the 4th of April, 1639, as stated by Mr. Chalmers; for the assembly rose on the 19th of March, 1638-9, a week or two prior to this supposed date of the order. This decision of the lords commissioners is again referred to in another act of assembly, passed at the April session of 1650, entitled, "an act prohibiting all compliance with captain William Clayborne, 'in opposition of his lordship's right and dominion over this province,' as being of the same date as before mentioned, to wit—"the fourth of April, one thousand six hundred thirty-eight." This last act recites also the above proclamation of the governor of Virginia as being "made and published in Virginia the fourth of October, one thousand six hundred thirty-eight." (See this last mentioned act at large in its proper place as to date in this volume.)

But a more important objection has been made to this document of the decision of the lords commissioners in favour of lord Baltimore. It has been denied, that any such decision or report of the said commissioners, or "committee of foreign plantations," ever existed. In the bill in chancery filed by the Penns, in the year 1735, against the then lord Baltimore, to compel a specific performance of an agreement before then entered into, between these two proprietaries, relative to the bounds of their respective provinces, it is stated, that shortly after Mr. William Penn had obtained his patent for Pennsylvania, which was in the year 1681, (1682, N. S.) he also purchased of the duke of York, (afterwards James II.) the three lower counties, (now Delaware state,) and that a controversy arising thereupon, between these two proprietaries, concerning the bounds of the province of Maryland, on the side next to those counties, the lord Baltimore (Charles, son and heir of Cecilius,) preferred his petition to the king in council concerning the same, which petition was some time in May, 1683, "referred to the consideration of the then committee of trade and foreign plantations, (which committee did then consist of lords of his majesty, most honourable privy council,) and before the said committee, the said lord Baltimore and your orator's father (William Penn) and their counsel learned in the law, were many and divers times heard for near two years and a half together, and a very long suit and trial were had thereon between your orator's said father and the then lord Baltimore, touching the right and title to the said land and soil of the said three lower counties." The bill then proceeds, after stating the order in council thereupon, (which was, in substance, to divide the peninsula between them,) to a distinct allegation relative to the foregoing report of the lords commissioners of 1638, as follows:—"And your orators further show unto your lordship, that during the said contest in the years 1683, 1684, and 1685, the said then lord Baltimore, upon the eighth of October, 1685, produced to the then committee of

trade and plantations, in order to serve himself, an authentic, blank, fictitious paper, not pretended to be signed or sealed at all, but drawn up in the form of the draft of a report and order of the committee of foreign plantations, and supposed to be made on the fourth of April, 1638, touching differences between some lord Baltimore and one Mr. Clayborne, about the isle of Kent, in order to show that former boards' pretended opinion touching the lord Baltimore's right to the isle of Kent, and the then said committee of trade and plantations in 1685, put off the matter, and gave the said lord Baltimore time to procure an attested copy of such pretended report or order in 1638, which the said lord Baltimore undertook to procure, but, nine days after, the said lord Baltimore declared in person to the said committee of trade and plantations, namely, on the 17th of October, 1685, that he could not find the original; whereby an attested copy might be procured, neither, as your orators charge, is there any authentic book or office, where any original or authentic copy may be found or had, but the said blank paper was a mere fiction."*

Unprovided as we are with any authority to disprove this allegation in the before mentioned bill, and not being able to procure lord Baltimore's *answer* thereto,† we are left to rest the authenticity of the proceedings and order in council of 1638, as before stated, on that kind of evidence which depends upon concomitant circumstances. That Clayborne made resistance to lord Baltimore's possession of the isle of Kent; that from superior military force he was obliged to fly to Virginia; that he was there demanded by commissioners from Maryland; and that the governor of Virginia thought it proper to send him, or permit him to go home to England for the investigation of his rights and pretensions; all seem to be facts well authenticated by the historians of Virginia. There is every probable circumstance, therefore, to warrant the presumption, that he made the application by *petition*, as before stated, to the king in council for a redress of his wrongs. If then he did actually prefer his *petition* before mentioned, some *proceedings* must have been had upon it. If such *proceedings* took place, it is to be presumed, that no order *in council* was ever made *in favour of his claim*, or else he would immediately have availed himself of such order, by returning to the possession of his islands and settlements, and such order would have appeared in form. But this not being the case, and the report of the commissioners appearing of a directly opposite nature, there are strong grounds to suppose that such their *report*, as exhibited, was "authentic," although no "original" could be found, "whereby an attested copy could be procured." That the king finally ratified this report of the lords commissioners, must be inferred from the foregoing proclamation of the governor of Virginia; who, without doubt, never would have issued such a proclamation, unless commanded so to do by some order of the king in council to that purpose. The difficulty which lord Baltimore experienced in the year 1685, in his endeavours to find the "original" of this report or order of 1638, seems to be, in some measure, accounted for since, by the success of Mr. Chalmers, in his researches in the plantation office, whereby he was enabled to present to the world, an authentic copy of the report, filed according to his quotation, among "Maryland papers, vol. 1, bundle C," but bearing the date of "4th of April, 1639," instead of 1638. This *bundle* might have escaped his lordship's notice, or the search of the proper officer. But the paper, of which Mr. Chalmers has given us a copy, is most probably that "original," with the variance only in its date, a circumstance not now to be easily accounted for.

* Taken from a MS. copy of the bill in my possession.

† I have not been able to find any copy of lord Baltimore's *answer* to the before mentioned bill in chancery, filed by the Penns in 1735, among the records of Maryland. A copy of it might be procured from England, which would throw much light upon the history of the dispute between these two proprietaries.

NOTE (XIV.) p. 76.

Writ of attachment against the goods and chattels of Clayborne and his partners, in the isle of Kent; from the provincial record book, entitled, "Council Proceedings from 1636 to 1657," p. 35.

Cecilus lord proprietary, &c., To the sheriff of our isle of Kent, greeting: Whereas William Clayborne, late of the isle of Kent, and his partners William Cloberry and David Morehead of the city of London in the kingdom of England, merchants, have jointly usurped our said isle of Kent, and since the absolute lordship and proprietary of the same isle granted to us by his majesty's charter under the great seal of England, and since the promulgating of the said charter within our province, have notwithstanding continued and maintained the said usurpation; and the said William Cloberry and David Morehead, both by letters, messages, and otherwise out of England, have encouraged and assisted the said William Clayborne to commit sundry insolencies, contempts, and rebellions against our lawful government of the said island, and have by sundry supplies of men, arms, and other commodities ministered succour and means to the said William Clayborne to defend and maintain the said island against our said just right and title, and to drive a trade with the Indians of our province, contrary to our royal right and privilege therein, and thereby put us to great expense and charges for maintaining our said just rights and privileges, and for repressing their sundry attempts to the infringing and overthrowing thereof, if it had been in their power, and, by their coopers and servants sent out of England to that purpose, have felled down divers of the best timber trees for making of pipe staves upon our said land, and have otherwise trespassed and committed waste upon the same, to the great disturbance of the peace of our said province, and to our damage of £1000 sterling. Therefore, we do hereby command and authorize you to attach all or any the pipe staves or other goods and chattels whatsoever of the said William Clayborne and his partners within the said isle of Kent, and at the time of the said attachment to cite or summon publicly the said William Clayborne and his partners William Cloberry and David Morehead, that they appear in person or by attorney at some county court held at St. Mary's before the first day of February, which shall be in the year of our lord 1639, there to make answer to such trespasses, wastes, misdemeanors, contempts, and seditious practices, as our attorney shall have to charge them with on our behalf; and if at the making the said summons or proclamation, or within fifteen days after, any one shall offer to bail the said goods, by putting in sufficient security to the value of the said suit, you shall, by virtue hereof, take recognizance to our use, and thereupon release the said attachment; and if no bail be offered within the time limited, we do hereby appoint and authorize you to cause so many of the said goods and chattels attached, whereof there shall be any danger of impairing or a necessity of present disposal thereof, to be praised to their present best value upon the place by two skilful and honest neighbours indifferently chosen, and to cause the said appraisement to be given in upon oath of the said appraisers to our commander of the said island, and by him to be entered upon record, and thereupon to deliver, to our use, the said goods and chattels, so praised and recorded, to our receiver general, his deputy, or assigns, he or they first putting in sufficient security to answer and satisfy the full value of all such goods as shall be by them received as aforesaid to the said William Clayborne and his partners, when they shall enter their appearance in our said county court, within the time aforesaid limited and appointed for their appearance.—Given at St. Mary's the 2d of January, 1638."

NOTE (XV.) p. 76.

I find the following entry made in the oldest record book in the council chamber, (Maryland,) entitled, "Council Proceedings from 1637 to 1644."

"13th May, 1638.—Entered by Cyprian Thoroughgood for Mr. Thomas Copley,—100 wt. of *bearer* traded for with the Indians, since the 10th of February to this present day." Several entries besides, of contracts for *beaver*, appear in the records about this date. From some proceedings of the Virginia Company in London about the year 1621, (as stated by *Stith*, p. 197, and quoted in *Burk's Hist. Virg.* (vol. 1, p. 222,) it would seem, that the Virginia colonists had not, prior to that time, opened any trade of much importance with the Indians for peltry, and that it was then first suggested to the company, from some information received by them of the profitable trade of that sort carried on by the French and Dutch in the northern parts of America. This is easily accounted for by reflecting, that the furs of all northern climates are much superior, and indeed more plentiful than those of the southern.

NOTE (XVI.) p. 78.

The following extract from *Beverley's History of Virginia*, (B. 3, ch. 12,) is here inserted, as being explanatory of what we have mentioned in the text.

"Of the treasure or riches of the Indians."

The Indians had nothing, which they reckoned riches, before the English went among them, except *peak*, *roenoke*, and such like trifles made out of the *Cusk* shell. These passed with them instead of gold and silver, and served them both for money and ornament. It was the *English* alone, that taught them first to put a value on their skins and furs, and to make a trade of them.

"*Peak* is of two sorts, or rather of two colours, for both are made of one shell, though of different parts; one is a dark purple cylinder, and the other a white; they are both made in size and figure alike, and commonly much resembling the *English buglas*, but not so transparent nor so brittle. They are wrought as smooth as glass, being one-third of an inch long, and about a quarter diameter, strung by a hole drilled through the centre. The dark colour is the dearest, and distinguished by the name of *Wampum peak*. The Englishmen that are called Indian traders value the *Wampum peak* at eighteen pence per yard, and the white peak at nine pence. The Indians also make pipes of this, two or three inches long, and thicker than ordinary, which are much more valuable. They also make *runtees* of the small shell, and grind them as smooth as *peak*. These are either large, like an oval bead, and drilled the length of the oval, or else they are circular or flat, almost an inch over, and one-third of an inch thick, and drilled edge ways. Of this shell they also make round tablets of about four inches diameter, which they polish as smooth as the other, and sometimes they etch or grave thereon circles, stars, a half-moon, or any other figure suitable to their fancy. These they wear instead of medals before or behind their neck, and use the *peak*, *runtees*, and pipes for coronets, bracelets, belts, or long strings hanging down before the breast, or else they lace their garments with them, and adorn their *tomahawks*, and every other thing that they value.

"They have also another sort, which is current among them, but of far less value; and this is made of the cockle shell, broken into small bits with rough edges, drilled through in the same manner as beads, and this they call *roenoke*, and use it as the *peak*.

"These sorts of money have their rates set upon them as unalterable, and current, as the values of our money are "

What is said by *Colden* in his "History of the Five Nations," (p. 3.) may be cited in further illustration of this subject.—"*Wampum* is the current money among the Indians: It is of two sorts, white and purple; the white is worked out of the inside of the great conques into the form of a bead, and perforated to string on leather; the purple is worked out of the inside of the muscle shell; they are wove as broad as one's hand, and about two feet long; these they call

belts, and give and receive them at their treaties, as the seals of friendship; for lesser matters a single string is given. Every bead is of a known value, and a belt of a less number, is made to equal one of a greater, by so many as is wanting, fastened to the belt by a string."

This Indian coin, or money, appears to have been in use not only, as we have seen, among the Indians of Virginia, and the Iroquois, or Five Nations to the northward of New York, but with the Indians also inhabiting the banks of the Delaware. *Proud*, in his *Hist. of Pennsylvania*, (vol. 1, p. 133,) mentions, that "in the year 1672," (prior to Penn's charter and purchase,) "the inhabitants of New Castle and Hoarkill, being plundered by the Dutch privateers, were permitted by the government at New York," (under whose subjection the settlements on the Delaware then were,) "in reparation of their losses, to lay an imposition, to the value of four guilders, in *wampum*, upon each anker of strong rum, imported or sold them." As Indians would probably be the greater consumers, it was, without doubt, intended to operate as a tax upon them. The historian further observes, that "*wampum* was the chief currency of the country; of which, at this time, the Indians had carried so much away, that it was become scarce. To increase the value of which, the governor and council at New York, in the year 1673, issued a proclamation, which was published at Albany, Delaware, and other places." In a note hereto subjoined, he further explains, what is meant by *wampum*. "This is the Indian money, by them called *wampum*; by the Dutch, *Sewant*. It is worked out of shells, into the form of beads, and perforated to string on leather. Six beads were formerly valued at a *stiver*; twenty *stivers* made what they called a *guilder*; which was about six pence currency, or four pence sterling. The white *wampum* was worked out of the inside of the great *conques*. The black, or purple, was formed out of the inside of the *mussle* or *clam* shell. These, being strung on leather, are sometimes formed into belts, about four inches broad, and thirty in length; which are commonly given and received at treaties, as seals of friendship. Wampum has been long made by certain poor *Indian* families, at Albany; who support themselves by coining this cash for the traders." See also *Smith's Hist. of New York*, p. 53.

It would seem, however, that the Indians, resident north eastward of the province of New York, had originally no knowledge of this sort of money or medium of trade. *Hutchinson*, in his *Hist. of Massachusetts*, (vol. 1, p. 406,) quotes the following passage from *Hubbard*. "The people of New Plymouth, in the year 1627, began a trade with the Dutch at Manhados, and there they had the first knowledge of *wampompeag*, and their acquaintance therewith occasioned the Indians of these parts to learn to make it." *Hutchinson* from thence draws the inference, that "it is not probable the New England Indians had any instrument of commerce; the English could not have been seven years among them without discovering it."

From *Pike's* expedition to the source of the Mississippi, (p. 86,) *wampum* appears to be still in use among the Indians of that part of America; but it seems to be considered by them only as a traditional *emblem of peace*, handed down to them, by custom, from their ancestors. In the year 1806, a *Chippeway* chief presented to captain Pike a peace-pipe for him to bear to the *Sioux*, on which were seven strings of *wampum*, as authority from *seven bands* of the *Chipeways* either to conclude peace or to make war.

Whether the Indians, who occupied Maryland prior to our colonists, spoke the same language as those of the Powhatan confederacy in Virginia, we are not informed. It is certain, that the first English visitors have mentioned no remarkable difference between them, as to their customs and manners. That *peak* and *roenoke* passed as current money among the aborigines of Maryland, as well as those of Virginia, the following extracts afford undeniable evidence.

From "Council Proceedings from 1636 to 1657," p. 20.

"Know all persons whom it concerneth, that I have and hereby do give free liberty and licence to Thomas Cornwaleys, esq., and one of the council of this province, to trade with any the Indians of this province for corn, or *roenoke* or *peak*, and the same to utter and sell to any of the inhabitants of this province, and no farther or otherwise. This licence to endure until I shall signify the contrary. In witness whereof, I have hereunto set my hand and seal this 30th of December, 1637.

LEONARD CALVERT."

Also, the following license, from the same book, p. 32, but more correct in the old book, entitled, "Council Proceedings from 1637 to 1644."

"7th June, 1638. The bearer hereof captain Henry Fleete is hereby licenced to trade with any Indians for corn or *roenoke* to buy corn, either within this province of Maryland, or on any part of the southern shore below Patowmack town; Provided, that he bring the said corn into this colony, to be used and expended in the colony.

JOHN LEWGER, *Secretary*."

"The same license granted to James Cloughton, July 9th."

The "southern shore" of the Patowmack must have been what is now deemed the Virginia shore of that river, and "Patowmack town" was what is now called Marlborough; but we may suppose, that as that part of Virginia was not then inhabited by the English, it was not considered as any infringement upon the rights of the Virginians; or, it is possible, that the Maryland government might have been authorized by that of Virginia to grant licences in such cases.

NOTE (XVII.) p. 78.

The following commission, (extracted from "Council Proceedings from 1636 to 1657," p. 30,) exemplifies those issued for the purposes mentioned in the text.

"Cecilius, &c., to our trusty Cuthbert Fenwick, of St. Mary's, gent., greeting:—These are to authorise you to question all persons, whom you shall find unlawfully trading within our province of Maryland, or shall find cause to suspect that they have traded or attempted to trade with the Indians without license from or under us first had and obtained, and the persons so offending, together with all such truck as you shall find with them, to attach and keep in safe custody, until you shall receive further order therein from us or our lieutenant general. And whereas we are informed, that there is a *wreck* happened on the eastern shore within our province, we do further hereby authorise you to inquire and examine touching the said *wreck*, and whether any untimely death of any person hath happened therein, and by what means, and if you shall find any such wreck to have happened, to take an inventory of the vessel, wreck, and of all goods therein being or belonging to her, and the same to seize to our use, and deliver to our receiver-general forthwith upon your return to St. Mary's, and for so doing this shall be your warrant. Given the 26th of April, 1638."

The following, (extracted from the old thin book, entitled, "Council Proceedings from 1637 to 1644,") appears to be a *return* to the aforesaid writ or commission.

"The report of Cuthbert Fenwick, taken the 8th of May, 1638.

Who saith, that inquiring after the boat, that was said to be cast away on the eastern shore, he learned, that it was the boat of one Rowland Williams of Accomack; and that he was killed by the Indians of these parts; and one other who was in the boat with him; and he was told by the young king of Wirowamnen, that it was the —*—, or the —*—, or both; and that the king of Patuxent was within six miles of the place, where it was done, and that, within

* The names here are not legible in the record.

two or three days after the slaughter, the said king hurried away the truck and boat to Patuxent."

A commission, similar to the former part of the preceding one, had issued in the February preceding to William Brainthwayte, "to seize vessels unlawfully trading with the Indians within the province, or *passing through the same*." See "Council Proceedings from 1636 to 1657," p. 27.

It is probable, that the men murdered in the boat, just mentioned, were unlawful traders from Virginia.

NOTE (XVIII.) p. 78.

License to trade without the Capes.

"Cecilius, lord proprietary of the provinces of Maryland and Avalon, lord baron of Baltimore, &c., to all persons, to whom these presents shall come, greeting: Know ye, that we, for divers good considerations us thereunto moving, have given and granted, and by these presents do give and grant unto the bearer hereof, Thomas Games, mariner, full and free power, liberty, and authority, to pass and transport himself, and his vessel, out of our province of Maryland and through any parts thereof, to trade and commerce for corn, beaver, or any other commodities, with the Dutchmen in Hudson's river, or with any Indians or other people whatsoever being or inhabiting to the northward without the capes commonly called cape Henry and cape Charles, willing and requiring the said Thomas Games not to sell or barter, or otherwise give or lend, any arms, powder, or ammunition, unto any Indian or foreigner. This license to continue in force for one year. Given at our fort at St. Mary's, 12th February, 1637."

From "Council Proceedings from 1636 to 1657," p. 26.

NOTE (XIX.) p. 83.

Commission to Sir William Russell, knight, and others.

[Hazard's Collections, vol. 1, p. 373.]

Charles, by the grace of God, king of England, Scotland, France, and Ireland, defender of the faith, &c.: To our trusty and well beloved Sir William Russell, knight and baronet, Sir William Uvedale, knight, Sir Dudley Digges, knight, Sir John Wolstenholme, the elder, knight, Sir Sampson Darell, knight, Sir John Wolstenholme, the younger, knight, Sir Abraham Dawes, knight, Sir John Jacob, knight, Henry Garnway, of London, alderman, Anthony Abdy, of London, alderman, John Latch, and John St. Almond, esquires, Isaac Jones, Marmaduke Royden, Robert Oxnick, John Slang, and Philip Burlamacky, of London, merchants, Edward Ditchfield, of London, merchant, Reuben Borne, and George Brumley, of London, grocers. Whereas, not long since, by our several proclamations, we have declared our royal pleasure concerning the importing of all sorts of tobacco growing upon our English plantations to the port of London; with strict charge and commands to our several officers to see the same performed accordingly; and also have, for divers reasons expressed in the said proclamations, confirmed and renewed our straight commands, and directions, to all our justices of assize, our justices of peace, our mayors, sheriffs, and all other our officers of our several counties, in their several places, to be aiding and assisting to those we have and shall employ for the depressing and rooting out of all English tobacco lately planted and growing in divers places of our realm of England, and Ireland; which said proclamations being duly executed, will no doubt much advantage the benefit of the said foreign plantations, as also a better conformity in the orderly payment of our custom and impost usually paid us for the same. Yet having of late received credible information that many of the said planters residing upon the said colonies, have and are still likely to suffer under the burden of many oppressions occasioned by the secret and indirect trade of particular

merchants and shopkeepers, who make a prey of them and their labours, by supplying their necessities with commodities at such unreasonable rates, that they are usually forced to pay fifty or sixty pounds weight of tobacco for a pair of shoes, with such like unconscionable advantages in several other merchandizes, that the poor planters have had scarce necessities for their bodies, but have engaged the most part of their crops beforehand, to their said merchants and shopkeepers, in so much that they only labour and toil to enrich those that thus work upon their necessities, without any ability either to satisfy us our ordinary duties, or to apply themselves to more noble and stable commodities whereby they may become of consequence to our crown of England; which unjust and unconscionable course of the said merchants and shopkeepers (as we are likewise informed) have some years past been so grievous unto the said planters, that they have, contrary to expectation, been forced, not only to petition for abatement of our ordinary customs and imposts, but have in extreme necessity begged their bread from door to door, without any help or relief from the said merchants and shopkeepers: by which means, and out of the woful experience of their miseries, they have been of late years compelled to offer their tobacco to divers of the merchants of London, tendering unto them a contract for some term of years, which being refused, they have since been forced to send the most part of their tobacco for foreign parts, without any payment of our ordinary duties, any regulation either in quality or quantity of tobacco, or any respect to us or our dominions, from whence they have annual support of men, munition, and provisions, and this contrary to our royal command in our several proclamations, and several orders of our council in that behalf; by all which, and other indirect and disorderly proceedings in the said plantations, we apparently see the danger of their utter ruin, besides the loss of those just profits that do belong unto us. And, being lately solicited by divers of that body, (who do sensibly groan under the burden.) to take all these grievances into our royal consideration. And, finding, that in their infancies, as yet the chiefest commodity that must support and enable them to more stable commodities, is this of tobacco, for which, if they fail of an indifferent and reasonable rate, the said planters must wholly be disabled and impoverished. Having advised with our lords and others of our privy counsel, we are resolved, and our will and pleasure is, to have hereafter the sole pre-emption of the said tobacco growing upon our said plantations; and that at such rates and prices as shall be found fit, (having respect to the support of the said colonies; and being moved to make choice of some fit and able persons who have experience of the value and quality of the said several sorts of tobacco, as also of the condition of the present state of the said plantations, and have observed the great necessities and miseries they have endured by the irregular planting and ordering thereof, and unconscionable practices put upon them in the sale thereof: Know ye, therefore, that we reposing especial trust and confidence in your fidelity, long experience, and diligence, have nominated, constituted, and appointed, willed and required, and by these presents do nominate, constitute and appoint, will and require you, the said sir Wm. Russell, sir Wm. Uvedale, sir Dudley Diggs, sir John Wolstenholme, the elder, sir Sampson Darell, sir John Wolstenholme, the younger, sir Abraham Dawes, sir John Jacob, Henry Garaway, Anthony Abdy, John Latch, John St. Almond, Isaac Jones, Marmaduke Royden, Robert Oxwick, John Slang, Philip Burlamachy, Edward Ditchfield, Reuben Burne, and Geo. Brumley, to be our commissioners:—Giving, and by these presents granting unto you, and unto any seaven or more of you, (whereof you, the said sir John Wolstenholme, the elder, sir John Wolstenholme, the younger, sir Abraham Dawes or sir John Jacob, to be one,) full power and authority to call before you all such person and persons as have any interest in the plantations of Virginia, Bermudas, the Caribe islands, or any other of our English colonies, and ac-

quainting them with this our royal will and pleasure, to require them to declare unto you, or any such seaven or more of you, their several interests, and to demand and know what quantities of tobacco they have upon their several plantations, what they expect upon their returns, and when they shall have the same: And in our name to treat and contract with them, either in part or company, for their several quantities; that their several quantities being taken off at reasonable rates, and in different days of payment, they may bring no interruption in our intended contract with the planters themselves, upon the said plantations: And because many of them upon some private end may seem unwilling to make this contract, alleging that the planters inhabiting in the said colonies are the chief owners and ingrossers of the said tobacco, and that there is little belonging to them, but for satisfaction of several parcels of goods and wares which they have served into those colonies, for which they have no payment but by tobacco, These are to require you and authorise you, and any such seaven or more of you, to assure, on our behalf, the said planters and owners, that we are now sending our commission into every of the said plantations to treat and conclude the contract there; and that we hold it fitting, first to begin at home, that the said planters may see we have omitted nothing that shall conduce to this service, or that may take away any obstacles there upon pretences of debts or otherwise. And if any of the said debts shall appear to be of so great value, you are likewise to enquire of the condition of them, and whereupon they grow, that if it shall be found just and fitting, we may give order to examine the same there also, and to regulate such order to the merchants and shopkeepers here as shall be reasonable for their gain, and not now oppressive and burthensome to the said poor planters. And because the season calls upon a dispatch in this business; and that we may be the better informed of all difficulties that may arise in the same, Our will and pleasure is, that you forthwith give us an account of your proceedings and conclusions herein: And if any opposition be made, as in all business of this nature the beginnings are full of doubts and interruptions, our will and pleasure is, that you certify unto us the names of such that are refractory to our commands; and if they shall demand greater rates than you on our behalf shall think fit to be given, or shall make any other pretences why they should not submit themselves to this our royal pleasure, wherein our aim is not for our own private profit, as for the support of our said colonies and preservation of our subjects who live and reside there: Our will and command is also that you, or any such seaven or more of you certify together with such their refusal the reasons they offer for the same, to the end that we may perceive what can be objected against this our royal intention: And because our desire is to have all expedition in this contract, and to proceed abroad upon the said plantations with the same expedition we go at home; Our will is, and we do require you to give such attendance upon this our service, that we may have this our commission returned unto us before the fourteenth day of July next; and herein to consider of all such occurrences that as well here as upon the said plantations may fall out for the advancement of this our service, together with the prices you shall think requisite to be given; the days of payment you shall agree for, with the quantities and qualities of each plantation to be yearly allowed; and for what term of years the said contract shall continue; and by what means it may be best effected, and the said tobacco orderly brought into our said port of London, from whence all domestique and foreign parts are to be supplied; with such other incident considerations as this our service shall require, that accordingly we may immediately dispatch our said commission to the said plantations, and make a settlement of this business, for the more speedy relief of our said poor subjects, and the full performance of this our pleasure and command. In witness, &c., witness ourself at Westminster, the nineteenth day of June, in the tenth year of our reign.

Per Breve de Privato Sigillo.

NOTE (XX.) p. 85.

"The process against William Lewis, Francis Gray, Robert Sedgrave," &c. [Copied from the oldest record book in the council chamber of Maryland, entitled, "Council Proceedings from 1637 to 1644." N. B. The pages of this book are not numbered.]

"On Sunday, the first of July, William Lewis informed captain Cornwaleys that certain of his servants had drawn a petition to Sir John Hervey, and intended at the chapel that morning to procure all the Protestants' hands to it. Whereupon the captain (calling unto him Mr. Secretary) sent for Robert Sedgrave, (one of the parties informed of) and examined him thereof, who confessed he had drawn a writing and delivered it to Francis Gray, who being likewise examined, had the writing in his bosom and delivered it to the captain. The writing was of this tenor:

CHRISTOPHER CARNOLL, ELLIS BEACHE, RD. SEDGRAVE,
and others which may hereafter be brought forth:

Beloved in our Lord, &c. This is to give you notice of the abuses and scandalous reproaches which God and his ministers do daily suffer by William Lewis, of St. Inigoes, who saith that our ministers are the ministers of the devil, and that our books are made by the instruments of the devil, and further saith that * * who are under his charge shall keep nor read any book which doth appertain to our religion within the house of the said William Lewis, to the great discomfort of those poor bondmen who are under his subjection, especially in this heathen country, where no godly minister is to teach and instruct ignorant people in the grounds of religion. And as for people who * * unto the said Lewis or otherwise, to pass the week, the said Lewis takes occasion to call them into his chamber, and there laboureth with all vehemence, craft and subtilty, to delude ignorant persons. Therefore we beseech you, brethren in the Lord and Saviour Christ Jesus, that you who have the power, that you will do in what lieth in you to have these absurd abuses and ridiculous * * to be reclaymed, and that God and his ministers may not be so grievously troden down by such ignominious speeches; and no doubt but you or they who strive to uphold God's ministers and word * all be crowned with eternal joy and felicity, to reign in that eternal kingdom with Christ Jesus, under whose banner we fight for evermore.—(All which words aforesaid which have been spoken against William Lewis, the parties hereunder written will be deposed when time and opportunity shall be thought meete.)

And being further examined touching the intent of the writing, Francis Gray said that he was not acquainted with the writing till it was delivered in to him by Robert Sedgrave, and that he had not as yet read it; and that Robert Sedgrave desired him to publish it to some of the freemen, to the intent only to procure them to join in a petition to the governor and council of this province, for the redressing of those grievances which were so complained of in the writing. Whereupon the captain willed them to attend again in the afternoon, and to bring security for their answering the matter at the court; and in the mean time to demean themselves quietly and soberly. And in the afternoon the captain and Mr. Secretary bound them over with two sureties to answer it at the next court.

On Tuesday, 3d July, the sheriff was commanded by warrant from the governor to bring William Lewis, Robert Sedgrave, Francis Gray, Christopher Carnoll and Ellis Beaché into the court, where were present the governor, the captain, and Mr. Secretary. The governor demanded of Robert Sedgrave whether that was his writing, and he confessed it. He demanded further touching the intent of the writing; and he answered as afore; and being demanded who

moved or advised him to that course, he said that himself and Francis Gray being much offended with the speeches of William Lewis, Francis Gray did wish to draw a writing to some of the freemen, and he would procure them to join in a petition to the governor and council, which the said Robert Sedgrave did accordingly the next day; but Francis Gray wished him to keep it till he had spoken with Mr. Copley; which was on Saturday, the last of June; and on Sunday morning, meeting with Francis Gray at the fort, he asked him whether he had spoken with Mr. Copley, who said he had, and that Mr. Copley had given him good satisfaction in it, and blamed much William Lewis, for his contumelious speeches and ill-governed zeal, and said it was fit he should be punished, and Francis Gray asked him for the writing and put it up, and were going with it to the chapel, when the captain called them in by the way. And Francis Gray being examined confest that he did wish him to draw a writing, to be delivered to two or three of the freemen, and his reason was because the said servants had no knowledge what to do in it, nor could so well go to the governor to move for redress as the freemen could.

Then were the complaints contained in the writing against William Lewis taken into examination. And touching the first, Ellis Beache did depose that William Lewis coming into the room where Francis Gray and Robert Sedgrave were reading of Mr. Smith's sermons, William Lewis said that the book was made by the instrument of the devil. And Robert Sedgrave being demanded whether William Lewis spake in general of Protestant books, or of that book in particular—said he could not well remember whether he spake of books in general. And William Lewis being put to his answer, confessed that coming into the room where they were reading of a book, they read it aloud, to the end he should hear it; and that the matter being very reproachful to his religion, viz. that the pope was anti-Christ, and the Jesuits anti-christian ministers, &c.;—he told them that it was a falsehood, and came from the devil, as all lies did, and that he that writ it was an instrument of the devil, and so he would approve it; and further he said not.

Touching the second, it was deposed by two witnesses, that William Lewis said that their ministers (innuendo the Protestants,) were the ministers of the devil.

Touching the third, Robert Sedgrave said at first that William Lewis did forbid them to use or have any Protestant books within his house; which being denied by William Lewis, and that he had expressly given them leave to use or have books, so they read them not to the offence or disturbance in his own house; and that he spake only touching that book then in reading; Robert Sedgrave said that he was not certain, whether he forbade them that book only, or all other books. And Richard Duke (a witness produced by Francis Gray, and a Protestant,) being sworn, said, that William Lewis said that Francis Gray should not read that book in his house, nor no such base fellows as he was; but no more or further as he heard. Then was Christopher Carnoll and Ellis Beache examined upon oath, and they likewise testified touching the forbidding of that book, but not any further as they heard.

Then was it alleged by William Lewis, that the intent of the writing was to combine the Protestants together, and to send a petition under all their hands to the governor and council of Virginia, that they would send * * for William Lewis, and proceed against him for a traitour; and he offered to prove by one then present, that heard James Thornton say, that they declared further their intent in his hearing; but it being refused by the governor as an insufficient proof, and the party himself demanded that heard the words; it was answered, that he was gone out a trading the day before; Whereupon the governor thought fit to defer their trial and censure till the witness could be produced in court,

and in the mean time willed the secretary to deliver his censure touching the complaint against William Lewis.

And the secretary found him guilty of an offensive and indiscreet speech in calling the author of the book an instrument of the devil; but acquitted him from that he was charged with all in the writing—that he used that speech touching Protestant ministers in general. He likewise found him guilty of a very offensive speech, in calling the Protestant ministers the ministers of the devil. He likewise found him to have exceeded in forbidding them to read a book otherwise allowed and lawful to be read by the state of England; but he acquitted him of the accusation that he forbade the servants to have or use Protestant books in his house; and because that these offensive speeches, and other his unreasonable disputations in point of religion, tended to the disturbance of the public peace and quiet of the colony, and were committed by him against a public proclamation set forth to prohibit all such disputes; therefore, he fined him in 500 weight of tobacco to the lord of the province; and to remain in the sheriff's custody until he found sufficient sureties for his good behaviour in * * in time to come.

The captain likewise found him to have offended against the public peace and against the proclamation made for the suppressing of all further disputes tending to the opening of a faction in religion; and therefore fined him likewise 500 lbs. tobacco to the lord of the province; but for his good behaviour thought fit to leave it to his own discretion. The governor concurred wholly in this sentence with the secretary. And so the court broke up, and William Lewis was committed to the sheriff.

Afterward he found security for his good behaviour; and was bound as follows:

8 July, 1638.—William Lewis, John Medcalfe, and Richard Browne, acknowledged themselves to owe unto the lord proprietary 8000 lbs. weight of tobacco to be paid unto the said lord proprietary, or his heirs, or officers, on the 10th of November next, in case the said William Lewis shall offend the peace of this colony, or of the inhabitants thereof, by incautious and unnecessary arguments or disputations in matter of religion; or shall use any ignominious words or speeches touching the books or ministers authorized by the State of England.

Recogn. coram me

JOHN LEWGER, *Secretary.*

Signed

WILLIAM LEWIS,
JOHN MEDCALFE,
RICHARD BROWNE.

NOTE (XXI.) p. 102.

The act of 1638, ch. 1, copied from the record book, in the office of the present court of appeals, entitled, "Lib. C. & WH." p. 61.

"*Memorandum.* That at the first meeting of the assembly, on the 25th of February, 1638, was enacted and ordained one act as followeth.

An act for the establishing the house of assembly and the laws to be made therein.

Whereas the king's majestie by his letters patents hath given and granted full free and absolute power and authority to the lord proprietary of this province to make and ordain any laws appertaining to the state of this province, by and with the advice assent and approbation of the freemen of the same or of the greater part of them or of their delegates or deputies, and to that end to assemble the said freemen or their delegates or deputies in such sorte and forme as to the said lord proprietarie should seem best;—By virtue whereof several writs of summons have been directed to certain gentlemen to appear personally at this assembly, and to the rest of the freemen inhabiting within the several hundreds of this colony and the isle of Kent, to elect their delegates or deputies in their

names and steads to be present at the same, and accordingly all the freemen of the said several hundreds and of the isle of Kent (some few excepted) have elected certain persons to that end, and the same their election have subscribed and returned upon record, and their said delegates and deputies are now assembled accordingly. Be it therefore enacted and ordained by the said lord proprietarie of and with the advice assent and approbation of the freemen and of the delegates and deputies assembled at this present assembly, that the said several persons, so elected and returned as aforesaid, shall be and be called burgesses, and shall supply the places of all the freemen consenting or subscribing to such their election in the same manner and to all the same intents and purposes as the burgesses of any borough in England in the parliament of England useth to supply the place of the inhabitants of the borough whereof he is elected burgess, and that the said gentlemen and burgesses and such other freemen (not having consented to any the elections aforesaid) as now are or shall be at any time assembled or any twelve or more of them, (whereof the lieutenant general and secretary of the province to be alwaies two,) shall be called the house of assembly, and that all acts and ordinances assented unto and approved by the said house or by the major part of the persons assembled, and afterwards assented unto by the lieutenant general, in the name of the said lord proprietarie, and shall be adjudged and established for laws to all the same force and effect as if the said lord proprietarie and all the freemen of this province were personally present and did assent to and approve of the same.

Which bill being read and passed by all the gentlemen and freemen present, they did consent it should be underwritten by the secretary in these words :

[The freemen have assented to this bill, that it was engrossed and published under the great seal.]

Then the lieutenant generall Leonard Calvert esqr., being demanded by the secretary whether he did assent to the said bill for and in the name of the lord proprietarie, answered yea, and willed that his assent should be underwritten to it in these words :

[The lieutenant generall in the behalf of the lord proprietarie willeth, that this be a law.]

And it was published under the great seal the twelfth of March, 1638."

NOTE (XXII.) p. 111.

"An act for swearing allegiance." (1633-9, No. 2.) [Copied from a record book in the office of the present court of appeals, entitled, "Lib. C. & WH." p. 1.]

"Sect. 1. Every person of the age of eighteen years and upwards, inhabitants, or that shall come hereafter to inhabit within this province, shall within one month next after this present assembly shall be dissolved, or within one month after such person shall land or come into this province, take an oath to our sovereign lord king Charles his heirs and successors, in these words following :

I, A. B. do truly acknowledge, profess, testify, and declare in my conscience, before God and the world, that our sovereign lord king Charles is lawful and rightful king of England, and of all other his majesty's dominions and countries ; and I will bear true faith and allegiance to his majesty, his heirs and lawful successors, and him and them will defend to the utmost of my power against all conspiracies and such attempts whatsoever which shall be made against his or their crown and dignity, and shall and will do my best endeavour to disclose and make known to his majesty his heirs and lawful successors, all treasons and traitorous conspiracies, which I shall know or hear to be intended against his majesty, his heirs and lawful successors. And I do make this recognition and acknowledgment heartily, willingly, and truly upon the faith of a christian. So help me God.

Sect. 2. Any person, to whom the same oath shall be tendered, refusing the same, shall be imprisoned till the next county court, or hundred court of Kent, and if at such court such party shall upon the second tender refuse again to take the said oath, the party refusing shall forfeit and lose all his lands goods and chattles within this province to the lord proprietary and his heirs, and shall be banished the said province for ever, (except women covert, who shall be committed only to prison, until such time as they will take the same oath.)

Sect. 3. The governor (for the time being,) or two of the council, or the secretary, or any judge sitting in court, or the commander of the isle of Kent, shall have power to administer the said oath."

The oath prescribed by the statute of 3 Jac. 1, ch. 4, was the same as that in the above bill as far as the words "dominions and countries;" it then proceeds as follows:—"and that the pope, neither of himself nor by any authority of the church or See of Rome, or by any other means with any other, hath any power or authority to depose the king, or to dispose of any of his majesty's kingdoms or dominions, or to authorize any foreign prince to invade or annoy him, or his countries, or to discharge any of his subjects of their allegiance and obedience to his majesty, or to give licence or lease to any of them to bear arms, raise tumults, or to offer any violence or hurt to his majesty's royal person, state, or government, or to any of his majesty's subjects within his majesty's dominions. Also, I do swear from my heart, that notwithstanding any declaration or sentence of excommunication, or deprivation made or granted, or to be granted by the pope or his successors, or by any authority derived, or pretended to be derived from him or his See, against the said king, his heirs or successors, or any absolution of the said subjects from their obedience: I will bear faith and true allegiance to his majesty, his heirs and successors, and him and them will defend to the uttermost of my power, against all conspiracies and attempts whatsoever, which shall be made against his or their persons, their crown and dignity, by reason or colour of any such sentence or declaration, or otherwise, and will do my best endeavour to disclose and make known unto his majesty, his heirs and successors, all treasons and traitorous conspiracies, which I shall know or hear of to be against him or any of them. And I do further swear, that I do from my heart, abhor, detest, and abjure, as impious and heretical, this damnable doctrine and position, that princes which be excommunicated or deprived by the pope, may be deposed or murdered by their subjects or any other whatsoever. And I do believe, and in my conscience am resolved, that neither the pope, nor any other person whatsoever, hath power to absolve me of this oath, or any part thereof, which I acknowledge by good and full authority to be lawfully ministered unto me, and do renounce all pardons and dispensations to the contrary. And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation or mental evasion, or secret reservation whatsoever: And I do make this recognition and acknowledgment heartily, willingly, and truly, upon the true faith of a christian. So help me God."

NOTE (XXIII.) p. 114.

The warrant or commission to John Harrington, for stopping the contraband trade with the Indians.

"Cecilius, lord proprietary, &c., to John Harrington, greeting; We do hereby authorize and command you to arrest any persons, vessels, or goods, trading or attempting to trade, or traded or attempted to be traded, with any Indians of these parts in or upon any the rivers, waters, or shores of the precincts of our province, without licence from us or our lieutenant, and the same persons, ves-

sels, and goods to have afore us or our lieutenant general at Saint Mary's, as soon as conveniently you may, there to answer for the contempt committed against our ordinance or proclamation published in that behalf, and for so doing this shall be your warrant or commission. Given at St. Mary's, this 6th of March, 1638. Witness, LEONARD CALVERT."

See "Council Proceedings from 1636 to 1657," p. 37.

NOTE (XXIV.) p. 115.

"An act for trade with the Indians," (1638, No. 5.)

[Taken from "Lib. C, and WH," p. 8. The same is also in the book in the council chamber, entitled, "Assembly Proceedings from 1637 to 1658."]

"Whereas the crown of England, (by right of first discovery,) became lord and possessor of this province and other countries thereunto adjoining, so that no subject of his majesty, or any other foreign prince or state whatsoever, might or could lawfully come into these parts to trade with the Indians thereof, without leave or license from or under the said crown of England, according as his majesty's said right is practised, allowed, and acknowledged in all other parts so accruing to the said crown by right of discovery.

And whereas his majesty being so possessed, by his letters patent to the right honourable Cecilius Lord Baltimore, granted and confirmed unto the said Cecilius all this province, with all rights thereunto belonging, saving only the sovereign allegiance due to the crown of England, and him the said Cecilius created absolute lord thereof, who, by virtue of his said lordship, after possession taken of this province, did by public proclamation prohibit all persons whatsoever from trading with any Indians of this province, without leave or license from or under his said lordship first had and obtained; and certain inhabitants thereof offending against the said proclamation, presuming upon former grants and commissions from his majesty, have been punished and proceeded against for unlawful trading without or before such leave or license obtained, and thereof complaining to the king's majesty, were by him referred to the lords of his majesty's most honourable privy council for determining the right and justice of the said complaints, which said lords, after full hearing and debating of the cause, have ordered and confirmed the said lord proprietary's said right of sole trading with the Indians of this province, declaring that no trade with the said Indians ought to be within the precincts of his lordship's patent, without license from his lordship, (as by the said order, bearing date at Whitehall, the 4th of April, 1638, may appear.)* We the freemen of this province, taking into our tender care the right and privilege of his said lordship so granted and declared, and that the presumption of such right and privilege was the main and chief encouragement of the said lord proprietary to undertake the great charge and hazard of planting this province, and to induce the gentlemen and other the first adventurers to come therein with his lordship, by propounding a portion and share thereof unto such as should adventure their persons and estates for the beginning of a plantation here, and being willing and ready to our powers to assist his said lordship in all his rights and privileges by inflicting penalties on all such as shall attempt to violate and infringe the same, in expectance of the like protection and assistance from his lordship, of and for the maintaining and defending of all our rights and liberties.

* See this order at large in note (XI.) preceding. The recital of it in this bill of the assembly is a further confirmation of the authenticity of the order, though its existence has been denied, as before mentioned. This session of assembly occurred within somewhat less time than a year after the date of the order. If no such order had taken place, and it had been "a mere fiction," as alleged, it is not probable, that it would have been here openly stated in this house of assembly. It demonstrates also, that the date affixed to it by Mr. Chalmers, (to wit, April 4th, 1639,) is erroneous, as that date is subsequent to this session.

' And further considering how inconvenient it may and is likely to prove to the state of this province, and the peace and plenty thereof, if a promiscuous liberty of trading with the said Indians should be permitted and left open to all persons indifferently, in regard that thereby the price of Indian corn may easily be enhanced, and the store thereof carried out of the province by foreigners in time of our greatest need, and that jealousies, rumours, and false news may be spread amongst the Indians by ill affected persons, to the disturbance of the peace and safety of the inhabitants, and that vessels weakly manned and provided may be and are usually set forth amongst Indians disaffected to this colony, whereby both the men have been and may be destroyed, and the vessels, arms, and ammunition therein taken, converted, and employed to arm the said Indians against us, and have therefore thought it necessary, and do desire that it may be enacted:

And be it enacted, that no foreigner* whatsoever, from and after the end of this present assembly, come into or through any the limits or precincts of this province, to the end to trade with any Indians of these parts, nor unlade or lade any goods or commodities traded or to be traded with or from any such Indians out of or upon any vessel riding or lying in or upon any the waters or shores within the limits and precincts aforesaid without grant or license from the lord proprietary or his lieutenant general, &c., upon pain of confiscation of all vessels and goods trading or attempting to trade, or traded or attempted to be traded, contrary to the intention of this act.—Provided, that it shall be lawful for any inhabitant of this province to trade with any Indians resorting to his plantation for two or three skins or such like small quantity of beaver, (so they enhance not the usual price thereof,) or for any commodities for his use, or provision, without incurring any penalty of this present act.—And further provided, that any inhabitant of this province, putting in security for preventing the disorders and inconveniences above mentioned, (as enhancing the price and carrying out the store of corn, spreading of false news, and going forth weakly provided,) shall have a license (of course) from the lieutenant general or the secretary of the province to trade with any Indians for any corn or other commodities to be used or expended within the province, or to export any corn bought of any Indians through and out of the province at any time when the ordinary price of corn in the province doth not exceed thirty pounds of tobacco for a barrel of corn, any thing in this act to the contrary notwithstanding."

NOTE (XXV.) p. 121.

Polygamy has been erroneously denominated in the English law books—bigamy; which, strictly speaking, has a very different meaning.—(See 4 *Bl. Com.* 163.) Our earliest legislators, in this bill "for felonies," have used the correct term. Polygamy was made felony by the statute of 1 Jac. 1, ch. ii., which, according to sir Edward Coke, (3 *Inst.* 88,) was the first act of parliament made against the offence; but, although the statute declares, that the offender "shall suffer death as in cases of felony," yet, agreeably to the known rules of construction in such cases, as the statute did not expressly take away the *benefit of clergy*, the offence was held to be within that privilege. This statute has been expressly extended to this province by the act of 1706, ch. 8, and is now the law of this state on the subject. If we are correct in supposing, as before mentioned, that this bill "for felonies" was intended to take away clergy from the offences therein enumerated; though the irresistible inference arising from the

* From that part of the *preamble* to this bill, which seems particularly to relate to Clayborne's claim, it would appear, that the word "foreigner" here was meant to apply to all persons, who were not inhabitants of the province of Maryland, as Virginians, &c., though, strictly speaking, the word "foreigner" could apply only to those who were not British subjects, as the Dutch or Swedes settled on the Delaware.

next bill, entitled, "an act allowing book to certain felonies," among which polygamy is not mentioned, we may then conjecture, that our first colonists, being Catholics, were induced to make the offence of polygamy *punishable with death*, in Maryland, while it was not so in England, from the severity with which the canonists of the church of Rome had treated *bigamy*, which was nothing more than what is commonly called *second marriages*; that is, the marrying either a widow and a virgin, or two widows, or two virgins successively, one after the death of the other. By a canon made at the council of Lyons, in the year 1274, such *bigamists*, (from the proof they thereby gave of their most incontinent dispositions, see *Barrington's Observat. on the Anc. Stat.* p. 166,) were declared, in all cases of crimes committed by them, not to be entitled to the privileges of clergy, and, in confirmation of this canon, the English statute of 4 *Edw.* 1, ch. 5, was made. But at the dawn of the reformation this statute of 4 *Edw.* 1, was repealed by that of 1 *Edw.* 6, ch. 12, sect. 16. Although all the statutes against the authority of the pope or see of Rome, were said to have been repealed by the statute of 1 & 2 *Ph. & Mar.* ch. 8, yet, as the statute of 1 *Eliz.* ch. 1, repealed that repealing statute of *Ph. & Mar.*, the statute of 1 *Edw.* 6, is said to have been thereby revived. See 2 *Hale's Hist.* 372. Thus laws vacillate with the change of *religious* as well as *political* parties.

NOTE (XXVI.) p. 114.

"*An act determining enormous offences.*" (1638-9, No. 25.)

Be it enacted by the lord proprietary of this province, of and with the advice and approbation of the freemen of the same, that these offences following in this act, and no other, shall be adjudged enormous offences within this province, that is to say:—Perjury, which is false answer or witness given upon oath in a court of record, not to the endangering of another's life;—Subornation of perjury, which is the hiring or persuading of another to commit such perjury; Conspiracie, which is unlawful combination for two or more persons against another's life, fame, or goods;—Scandalous or contemptuous words or writings to the dishonour of the lord proprietarie or his lieutenant generall for the time being, or of any of the council;—Exercising within the province any jurisdictions or authority which ought to be derived from the lord proprietarie, without lawful power or commission from or under him;—Contempts and misdemeanors against lawful ordinances or proclamations;—Abuses of public judges or officers;—Unlawful assembly, which is the disorderly meeting of three or more persons in a company to commit with force an unlawful act;—Forgery, which is the counterfeiting of deeds;—Or, to acknowledge any fine, deed, recognizance, or bill in the name of another not privy or consenting to the same;—Deceit or cosenage, which is the damageing of another by some undue slight;—False news, which is the spreading of false reports, to the disturbance of the peace or duty of the people;—Bribery, which is the accepting of or contracting for a reward for doing of justice;—Extortion, which is the taking or demanding greater fees than are limited by the law in such things as are by law provided for;—Oppression, which is the undue use of power and authority to the unjust grievance of another;—Using false weights or measures;—Tendering in payment unsound tobacco, and such unsound tobacco shall be burned;—All injuries done to an Indian in person or goods;—Servants marrying without giving satisfaction to the master or mistress;—Harbouring by night, or cloeking of another's servant without the knowledge and consent of the master or mistress;—Transporting out of the province, or over the bay of Chesapeake, or among the Indians, (without pass from the lieutenant generall or the secretary for the time being, or the commander of the isle of Kent,) any servant, or any person indebted or obnoxious any way to the justice of the province, knowing or having reason to know or

suspect him to be so engaged or obnoxious, or having notice given that he is so, Provided that no passe shall be given till after publique notice given aforehand of the person desiring such passe, and of his intent to depart out of the place, or till after security given for the payment of all debts within the province, or till after pardon of any fault whereof he is chargeable, nor shall be given by the lieutenant generall or secretary till after the said conditions performed at St. Maries;—forestalling, ingrossing;—This act to continue till the end of the next general assembly.” Lib. C & WH. p. 48.

NOTE (XXVII.) p. 129.

The following form of licensing marriages, (of which there appear many others in the book in the land office, entitled, *Liber* No 1,) exhibits the mode of contracting marriages in the early settlement of the province, and illustrates the clause of this bill stated in the text.

“November 2d, 1638. This day came William Lewis, planter, and made oath, that he is not precontracted to any other woman than Ursula Gifford, and that there is no impediment of consanguinity, affinity, or any other lawful impediment to his knowledge, why he should not be married to the said Ursula Gifford; and further he acknowledgeth himself to owe unto the lord proprietary 1000 lb. tobacco in case there be any precontract or other lawful impediment whatsoever as aforesaid, either on the part of the said William Lewis or the said Ursula Gifford.

WILLIAM LEWIS.

“Whereupon a license was granted him to marry with the said Ursula.”

Although *precontract* was held to be a ground of divorce even by the *reformed* Church of England at the time of making this bill, (1639,) yet, it may be remarked in illustration of the above, that this was one of the first complaints at the commencement of the reformation against the Church of Rome, and dictated the statute of 32 *Hen.* 8, ch. 38; entitled, “for marriages to stand notwithstanding precontracts;” in which act, (to please Henry, without doubt, who was sorely vexed with the court of Rome upon the subject of marriages,) copious invectives are thrown out against “the bishop of Rome,” for “the enormity of avoiding marriages by precontract.” It seems, however, that in the next reign, though the reformed church still ruled, “divers inconveniences, intolerable in manner to christian ears and eyes,” are stated to have “followed thereupon,” that is from the statute of 32 *Hen.* 8, as appears in the preamble to the statute of 2 & 3 *Edw.* 6, ch. 23, which was made to repeal the said act of 32 *Hen.* 8, as to *precontract* only; and again, in the Catholic reign of queen Mary, the act of 32 *Hen.* 8, was expressly and totally repealed by the statute of 1 & 2 *Ph. & Ma.* ch. 8, entitled, “an act repealing all articles and provisions made against the See Apostolick of Rome.” The act of 32 *Hen.* 8, was, however, on the restoration of the reformed religion, revived by that of 1 *Eliz.* ch. 1, except as to *precontracts*; as to which, it was to stand repealed by the before mentioned statute of *Edw.* 6. It was somewhat extraordinary, that this ground of divorce was not taken away until the year 1753, by the statute of 26 *Geo.* 2, ch. 33, commonly called the marriage act.

The mode of regulating marriages, prescribed by this bill of our provincial assembly, seems to have been in pursuance of the canons of the Church of England; though, perhaps in this respect, those of the Church of Rome were not materially variant therefrom. By the CI. canon, (see the canons of the Church of England, constituted in the year 1603,) “no faculty, or license, shall be henceforth granted for solemnization of matrimony betwixt any parties without thrice open publication of the banns by any person exercising ecclesiastical jurisdiction; but the same shall be granted” (without banns) “only by such as have episcopal authority, &c., and unto such persons only as be of good state

and quality, and *that upon good caution and security taken.*" By the CII. canon, "the security mentioned to be taken shall contain these conditions: First, that at the time of the granting every such license, there is not any impediment of precontract, consanguinity, affinity, or other lawful cause to hinder the said marriage." By the CIII. canon, "For the avoiding of all fraud and collusion in the obtaining of such licenses and dispensations, we farther constitute and appoint, that before any license for the celebration of matrimony without publication of banns be had or granted, one of the parties shall personally swear, that he believeth there is no let or impediment of precontract, kindred, or alliance, or of any other lawful cause whatsoever, to bar or hinder the proceeding of the said matrimony, according to the tenor of the foresaid license."

NOTE (XXVIII.) p. 130.

There were two kinds of *purgation* in use in England,—the *vulgar* and the *canonical*. The *vulgar* purgation was an appeal to what was called the *judicium die*; such as the trial *per ordeal* of either fire or water,—the *corsned*, and the trial *per bataille*. As these modes of trial were long before this period (1639) antiquated and disused in England, it is most probable, that the *canonical* purgation was here alluded to. This species of purgation was borrowed from the Roman civil law by the Canonists, and introduced into England by the Papal hierarchy. This mode of trial was, by putting the party, accused of a crime, to his own oath, as to his guilt or innocence, together with that of a certain number of compurgators attesting, in case of his denial of the accusation, their belief in the truth of what he swears. Persons accused before the temporal tribunals of crimes, wherein the *benefit of clergy* was allowed, upon prayer thereof, were delivered to the ordinary, before whom he was to be tried according to the ecclesiastical law, that is, by *canonical purgation* as above mentioned. But, it being perceived, that this opened a door to innumerable perjuries, it was in such cases, (that is, where benefit of clergy was claimed,) taken away by the statute of 18 *Eliz.* ch. 7, sect. 2. It would appear, however, that this statute did not take away this mode of trial in the ecclesiastical courts altogether, for, in crimes that were of spiritual cognizance only, such as heresy, they were still at liberty to tender what was called the oath *ex officio*, whereby the party was compelled to confess, accuse, or purge himself of the crime with which he was charged. This mode of proceeding was exercised in a most arbitrary manner by the *high commission* court, before mentioned, during the reign of James the first, and in many cases in the early part of the reign of Charles to the present period of which we are now treating; when the parliament, held in the year 1640, having in a great measure humbled the monarch, as well as the high church party, abolished the high commission court by the statute of 16 *Car.* 1, ch. 11, and prohibited any ecclesiastical court from proceeding by the oath *ex officio*; which court and proceedings had contributed greatly to bring on the disastrous events which ensued. On the restoration of Charles the second, when it was thought proper to revive some of the powers of the ecclesiastical courts by the statute of 18 *Car.* 2, ch. 12, this mode of proceeding, by administering the oath *ex officio*, was further and finally prohibited. See Clarke's *Praxis in Curris Ecclesiasticis*, titul. 324, and 3 *Bl. Com.* 106. It seems at first, therefore, to be matter of surprise, that our colonists should wish to adopt, especially in temporal offences, so odious a mode of trial as that of *purgation*. But, when we reflect, that they were Catholics, and that it was a mode of trial to which the Romish church in English had been much attached, their wish to adopt it becomes easy to be accounted for.

NOTE (XXIX.) p. 132.

In another part of the records I find this act mentioned, as entitled, "an act for the erecting of a *pretorium*;" which is certainly the more classical term, and agreeable to that used in the *latin* copy of the charter; as appears from the following clause in the section of that grant, wherein lord Baltimore was empowered to institute courts of justice:—"Ceteraque omnia alia et singula ad justitia complementum, curiasque, *prætoria*, et Tribunalia, judiciorum formas et procedendi modos, pertinentia, etiam si de illis expressa in presentibus non fiat mentio, ac in Curris, *prætoriis*, et tribunalibus illis, in actionibus, sectis, causis et negotiis quibuscunque, tam criminalibus quam personalibus, realibus et mixtis ac *prætoris* procedendi placita tenendi et terminandi per judices per ipsos delegatos liberam plenam et omnimodam tenore presentium concedimus potestatem." The words,—"*curias, prætoria, et tribunalia*,"—are expressed in the translation of the charter in *Bacon's laws* by the words,—"*courts, pretorian Judicatories, and tribunals*." The office of *pretor*, among the ancient Romans, is well known to have been that of a judge. There were two for the city of Rome. After they had extended their conquests over foreign countries, and reduced them to provinces, an additional number of pretors were created, and one appointed to each province. Each *pretor* of a province acted, not only as judge, but as a governor of that province. Hence, Cicero, in one of his orations against *Verres*, after a fine strain of invective against this corrupt pretor of Sicily observes,—"*Ejusdemmodi totum jus pretorium, ejusdemmodi omnis res judiciaria fuit in Sicilia per triennium, Verre pretore*." The word *pretorium* is sometimes also used substantively for the palace or hall of the pretor, where he held his court and heard causes. We thus discern the prototype, as it were, of that ambiguous character, with which the governors of the English provinces were mostly invested,—of acting as the chief *judiciary* as well as *executive* officer of the province, of being chief judge as well as governor.

NOTE (XXX.) p. 137.

Lent was a portion of time set apart for mortification by fasting, introduced in the early periods of christianity by the ancient Catholic church. But most of the reformed sects consider it as a superstitious institution, and reject it. The Church of England, however, not so furiously bent on beating down at once all the old institutions of the primitive christians, among other customs and usages of the ancient church, thought it proper, at the commencement of the reformation, to preserve that of *fasting*, or abstinence from flesh at prescribed periods of time. Accordingly, the statute of 2 & 3 *Edw.* 6, ch. 19, was made, entitled, "an act touching abstinence from flesh in Lent, and other usual times." From the preamble to this statute, as well as that of some subsequent statutes on the same subject, it would appear, that motives of political policy, as well as the principle—that "godly abstinence was a mean to virtue," prompted to the preservation of this religious usage. The preamble states, that "considering also that fishers, and men using the trade of living by fishing in the sea, may thereby the rather be set on work, and that by eating of fish much *flesh shall be saved and increased*." After repealing all former statutes, constitutions, and usages concerning fasting or abstinence from meats heretofore made or used, it enacts, "that no person shall eat any manner of flesh upon any Friday or Saturday, or the Embring days, or in any day in the time commonly called *Lent*, nor at any such other day as is or shall be at any time hereafter commonly accepted and reputed as a fish day, within this realm of England, under the penalty of forfeiting 10 s. and also to suffer imprisonment for ten days, during which time he is to eat no manner of flesh." The fifth section provides for granting licenses to eat flesh in the times prohibited, in such "cases of infirmity" as are alluded to in our

bill or act of assembly, to wit, to sick persons and women with child. Again, a similar policy of converting religious prejudices into public benefits was adopted by that wise and excellent princess queen Elizabeth. By the statute of 5 *Eliz.* ch. 5, entitled, "an act touching politick constitutions *for the maintenance of the navy*," it was enacted, that, "it shall not be lawful to eat any flesh upon any days now usually observed as fish days, or upon any now newly limited to be observed as fish day." Lest this should be misunderstood by some good protestant subjects, it was expressly stated in the 39th section thereof, to be "intended and meat *politickly* for the increase of fishermen and mariners and repairing of port towns and navigation, and not for any superstition to be maintained in the choice of meats. Those, who preach to the contrary shall be punished as spreaders of false news." As these English statutes were in force at the time of this session of assembly in 1639, they, probably formed that "law of England" upon the subject, alluded to in the above mentioned bill, which, however, repealed the observance of Wednesdays as fish days, newly introduced by the statute of Elizabeth.

NOTE (XXXI.) p. 140.

"An act for the government of the isle of Kent." (1638-9, No. 13.)

"The island, commonly called the isle of Kent, shall be erected into a hundred, and shall be within the county of St. Mary's, (until another county shall be erected of the eastern shore, and no longer,) and shall be called by the name of Kent hundred; and the commander of the said island from time to time appointed by the lord proprietary or his lieutenant general, shall be a justice of peace within the said hundred, during such time as he is commander, with all power and authority to a justice of peace belonging by the laws of this province; and the said commander shall appoint some one to be clerk or register for the recording of all matters pertaining to that office; and the said commander and register for the time being, shall be a court of record, and shall be called, the hundred court of Kent; And all matters and causes whatsoever civil or criminal, (except wherein the said commander is a partie,) happening or arising by or between any inhabitants of the said island, or wherein any inhabitant of the said island is defendant, and determinable in the county court, shall or may be heard and determined by and before the said commander in the said hundred court, and the said court shall have power to use and exercise all the same and the like powers and jurisdictions, and to issue and award all processe necessary for the bringing of any cause to a trial and executing of judgment therein, as may be used and exercised, issued or awarded by or out of the county court, and the said processe or writs shall issue in the name of the lord proprietary with the *teste* of the commander, and shall be signed by the said commander or register, and shall or may be directed to the parties themselves or to the high constable of that hundred from time to time to be appointed by the lord proprietary or his lieutenant general or the said commander or otherwise to any other person where the said high constable is a partie; and the same or the like forms of proceedings shall be used and observed in this court as is or may be used and observed in the county court of St. Marie's by the laws of the province as near as the said commander and register shall be able to judge, and all questions of law shall be decided by the said commander (with advice of the register,) and all issues of fact shall be tried by the commander, (if both parties consent,) or otherwise by any seven or more freemen, inhabitants within the island, to be returned by the said high constable, and such judgments shall be given in all causes in this court, as are most agreeable to the laws of the province or otherwise to the judgments usually given in the same or the like causes in the county court, as near as the said commander with advice of the register shall be able to determine; and if any party, afore or after sentence given, shall appeal from the said court, and shall put in caution to pursue his said appeal at

the next county court or court of admiralty, (after notice thereof given unto him,) and to pay treble damages to the defendant in the said appeal, in case the sentence given in the said hundred court be again affirmed, execution upon the judgment, so appealed from, shall be respited till certificate received from the county or admiralty court, that the said sentence is affirmed; and forthwith upon such appeal the register of the said hundred court shall deliver unto the defendant in the said appeal the record of the trial or judgment in the hundred court, and the same proofs and no more or other than were produced by the appellant in the hundred court shall be produced at the county court, except the court shall think fit to admit of other proofs; and to this end and for the further ease of the inhabitants of the said island, be it hereby provided, that once at least in every year, yearly in the month of October or November, (and at any other time when it may be with the convenience of the lieutenant general and secretary,) at or upon the desire or demand of the inhabitants of the said island or of the greater part of them credibly signified by letter, message or otherwise to the lieutenant general, the said lieutenant general and secretary and such of the council as may be obtained to accompany them shall or may repair to the said island and there hold a county court or court of admiralty, chancery, or pretorial for the full and final dispatching of all matters and causes whatever, wherein any of the inhabitants of the said island shall have use or need of the said courts or any of them; to which purpose the said lieutenant general and secretary so repairing to the said island afore, and such of the council as shall be present in the said island, and the commander of the said island or otherwise the said lieutenant general, secretary, and commander shall be all or any of the said courts within the said island to all the same intents and purposes and with all the same power and jurisdiction as any of the said courts is, hath or may or ought to be or have by the law of this province; Provided that, towards the recompensing and defraying the necessary pains and charges of such repairing to the said island for holding the said courts, every house-keeper of the said island shall contribute to the expense of the said voyage for every such time as the said lieutenant general and secretary shall repair to the said island at the request and desire of the inhabitants as aforesaid."

Taken from *Liber C & WH*, (a record-book in the office of the Court of Appeals,) p. 22.

NOTE (XXXII.) p. 141.

The forms of oaths prescribed by the bill, entitled, "an act for the several oaths to be taken by judges and public officers;"—from *Liber C & WH*, p. 6; a record-book in the office of the present *Court of Appeals*.

The oath of the lieutenant general.

"I, A. B. do swear, that, whilst I am a member of this province, I will bear true faith unto the right honorable Cecilius, lord of this province, and his heirs, (saving my allegiance to the crown of England;) and the said province, and him and them, and his and their due rights and jurisdictions, and all and every of them, will aid, defend, and maintain to the uttermost of my power; the peace and welfare of the people I will ever procure as far as I may; to none will I delay or deny right, but equal justice will administer in all things to my best skill according to the laws of this province; So help me God."

The oath of a Judge.

"I, A. B. do swear, that (whilst I am a member of this province,) I will bear true faith to the right honorable Cecilius lord of this province, and his heirs (saving my allegiance to the crown of England;) and his and their due rights and jurisdictions, and every of them, will defend and maintain to my power. To none will I delay or deny right. Reward of none will I take for doing of

justice : But equal justice will administer in all things to my best skill (without fear, favour, or malice of any person,) according to the laws of this province. So help me God."

The oath of a Councillor.

"I, A. B. do swear, that whilst I am a councillor of this province, I will true faith bear to the right honorable Cecilius lord of this province and his heirs, (saving my allegiance to the crown of England;) and him and them and his and their due rights and jurisdictions and every of them will defend and maintain to my power; the peace and welfare of the people I will ever procure as far as I may; I will aid and assist the administering and execution of justice in all things to my power; I will to my best skill give good and faithful counsel to the said Cecilius and his heirs and to his or their lieutenant general of the province for the time being, when thereunto I shall be called; and I will keep secret all such matters as are delivered me as secrets, as becomes a councillor to do. So help me God."

The oath of the *secretary* of the province, *clerk* of the chancery, and the *register* of every other court of record, "before he execute any act of his said office."

I, A. B. do swear that (whilst I am a member of this province,) I will true faith bear to the right honourable Cecilius, lord of this province, and his heirs, (saving my allegiance to the crown of England,) and his and their due rights and jurisdictions and every of them will defend and maintain to my power; to none will I delay or deny right in what belongeth to my office to do by the laws of this province; true record will I keep of judgments and all other matters to be by me recorded without falsification or corruption for fear, favour, or malice of any person. So help me God."

"To which end and purpose be it further enacted, that the *secretary of state* of this province, for the time being, shall have full power to administer to the lieutenant general the oath above mentioned, to be taken by the said lieutenant general, and that the lieutenant general, by the authority aforesaid, shall have full power to administer to every councillor of state, judge, and officer aforesaid, the oath above mentioned, to be taken by every of them in manner as aforesaid, according to the true intention of this present act. This act to continue to the end of the next general assembly."

N. B. Although the preceding bill, as well as all or most of the other bills of this session, was limited to continue only "to the end of the next general assembly;" yet, from the entry, stated in the text, relative to James Neal, this bill or act, prescribing the oaths above stated, was deemed to be in force and was therein acted under, in April, 1643, although two or three sessions of assembly had then intervened.

NOTE (XXXIII.) p. 145.

"An act for military discipline." (1638-9, No. 31.)

"Be it enacted by the lord proprietarie of this province, of and with the advice and assent of the freemen of the same, that every housekeeper or housekeepers within this province shall have ready continually upon all occasions within his, her, or their house, for him and themselves, and for every person within his, her, or their house, able to bear arms, one serviceable fixed gunne of bastard muskett boare, one pair of bandeloors or shott bag, one pound of good powder, foure pound of pistol or muskett shott, and sufficient quantity of match for matchlocks, and of flints for fire-lock, and before Christmas next shall also find a sword and belt for every such person as aforesaid.

And it shall be for the captain of St. Marie's band or the commander of the isle of Kent, their or either of their serjeants or marshall once in every month to demand at every dwelling house within their several districts a sight or view of

the said armes and ammunition, and to certifie the defaults therein to the capitaine or commander, who shall thereupon amerce such partie or parties so deficient, in such paine as the defect shall deserve in his discretion, so it exceed not thirty pound of tobacco for one default, and all amerciaments so imposed shall be paid to the said serjeant or marshall, to his or their own use.

And the said captain or commander shall forthwith furnish and supply the partie or parties deficient, with all such necessary armes and ammunition as afore appointed, and shall impose any price upon the same not extending to above double the value of the said armes and ammunition according to the rate then usual in the country.

And upon any alarm every householder of every hundred, having in his family three men or more able to beare armes, shall send one man completely armed for every such three men, and two men for every five, and so proportionably, to such place as shall be appointed or notified by the commander or high constable or other officer of the hundred, and the householders within St. Marie's hundred shall send their men as afore to the chappell yard neere the fort, except any other place be appointed by the lieutenant generall or the captain for the time being. And every householder delaying to send such man or men, according to the order aforesaid, for longer time than the man or men might conveniently have been sent, shall be fined in the pretoriall court according to the nature of the offence or contempt. This act to continue till the end of the next general assembly." Taken from *Lib. C. and WH.*, p. 55.

NOTE (XXXIV.) p. 149.

"An act for measures and weights." (1638-9, No. 34.)

"Be it enacted by the lord proprietarie of this province, of and with the advice and approbation of the freemen of the same, that within one month after the end of this assembly there shall be one standard measure throughout the province, as shall be appointed by the lieutenant generall, and after the said month no man shall sell by any other measure than what is sealed by the lieutenant generall or some person appointed by him to that purpose, according to the measures of the said standard. And no more shall be paid than three pounds of tobacco for the sealing of one measure.

And all contracts made for payment in corn shall be understood of corn shelled; and a barrel of corn tendered in payment at or afore the fifteenth day of October in any year, shall be twice shaken in the barrel, and afterwards heaped as long as it will lie on, and at or before the feast of the nativity, shall be twice shaken and filled to the edge of the barrel, or else not shaken and heaped as before, and after the said feast it shall not be shaken at all, but delivered by strike.

And within three months after this assembly is ended, no man shall sell or receive any tobacco or other goods by any steeleyards or other weight not sealed by the lieutenant general or persons appointed by him as afore (after such person with such seal shall be appointed) except it be small, sealed in England. And no more shall be demanded for the sealing of a pair of steeleyards or other grosse weight than the fee afore appointed for the sealing of a measure. This act to continue till the end of the next general assembly." Taken from *Lib. C. and WH.*, p. 58.

(NOTE (XXXV.) p. 157.

"An act for the building of the towne house." (1638-9, No. 28.)

"Be it enacted by the lord proprietarie of this province, by and with the advice and approbation of the freemen of the same, that at such time and place as the lieutenant generall and councell shall think fit there shall be a towne house built in such manner as the said lieutenant generall and councell shall think fit.

And every housekeeper inhabiting within the province shall be contributory to the said building either in stuff, workmanship, labour, or tobaccos, in such manner and after such rates proportionally to each man's personal estate, (to be valued by the said lieutenant general and councill,) as the said lieutenant general and councill shall assess or impose. Provided, that the whole charge thereof amount not to above six thousand weight of tobacco in the whole province, and that no man (artificers excepted) be pressed to labour at the said building before November or after February in any yeare; And provided, that artificers and labourers have such rates for their work as are reasonably used within the colony." Taken from Lib. C. and WH., p. 53.

NOTE (XXXVI.) p. 158.

"An act for the descending of land." (1688-9, No. 16.)

"Be it enacted by the lord proprietarie of this province, of and with the advice and approbation of the freemen of the same, That a widow immediately after the death of her husband, (if she have no jointure,) shall be admitted tenant during her life to one-third part of all the land whereof her husband was seised any time during the coverture, (except in cases where she hath acknowledged a fine or joined with her husband in making of leases:) And she shall tarry in the chief house of her husband during her widowhood. And where any person dieth seised of any land, the guardian of the heir appointed upon the will, (if the heir be within the age of eighteen years,) may enter upon the land and shall be accountable for the reasonable profits thereof to the heir when he comes of age.

And where any person dieth seised of any land without disposing thereof by will, the next heir of such person, to whom the land ought to descend by the most general custom or common law of England, shall or may enter upon all the land whereof his ancestor died seised, and if such next heir be not living or residing within the province the nearest heir living within the province and claiming the same may enter upon the land, and hold it without waste or impeachment, until such next heir or nearer heir make claime.

And if such next or nearer heir make not clayme within ten years after the death of the ancestor, such nearest heir living within the province shall be admitted tenant.

And if there be no guardian or heir living within the province to hold the land as aforesaid the lord proprietarie shall or may enter upon the land, (if it be immediately held from the lord proprietarie,) or otherwise the lord of whom the land is holden, and hold the same until some heir to the partie deceased make clayme and then he shall be accomptable to the heir as a guardian ought to be, and if no claim be made within three years then he shall hold it without account to his own use, and if no clayme be made within ten years from such death of the ancestor, the land shall escheat to the lord of the fee. And where any next heir or nearest heir living within the province is within the age of eighteen years, and no will of the ancestor hath appointed him a guardian, the judge of the county court wherein the land lieth shall appoint a guardian or curator to the heir's person and land, either the mother of the heir, (if she be a widow and living within the province,) or otherwise the nearest of kinne to the heir living within the province to whom the land is not immediately to descend, or if there be no such mother or kindred residing within the province, then such person or persons as the said judge shall think fit, who shall hold the land without waste or impeachment,* and shall be accomptable to the heir when he cometh to

*This expression, as the reader will have observed, has occurred in a few lines back in this same bill. It is, in both instances, so in the record, and most probably was so in the original draught of it; a small technical error in the draughtsman of the bill. It should have been, "without impeachment of waste,"—*absque impetitione vasti*.

live within the province, or to the age of eighteen years for the reasonable profits thereof with such allowance for his pains as the judge receiving the accompt shall think fit,—Provided, That no escheat of any land by virtue of this act be to the lord proprietarie, until all lawful demands upon the land be satisfied to creditors recovering; and any creditors of the deceased making such proof in court of his demand as shall satisfie the court of the truth and justness thereof; and alledging that there is not sufficient distress of goods, may be admitted to enter upon the land, until the debt be satisfied according to the value of the land held as it shall be appraised before the sheriff by two indifferent neighbours upon oath. This act to continue till the end of the next general assembly.” Taken from *Lib. C. and WH.*, p. 29.

NOTE (XXXVII.) p. 158.

“An act for assuring of titles to lands.” (1638–9, No. 17.)

“Be it enacted by the lord proprietarie of this province, of and with the advice and approbation of the freemen of the same, that the register of every court shall keep a book of record, in which he shall enter all grants, conveyances, titles, and successions to land whatsoever, at the request of any one desiring the same to be entered; And the commander of any hundred may likewise keep a book of record, in which he shall or may enter all grants, titles, and successions to any freehold within the hundred, at the request of any one desiring it. And the partie or parties making such request shall set forth the special matter or title by which he claimes; and if the partie claim by law only, as the widow for her dower, the heire for his inheritance, the lord of the fee for his escheat, or the tenant by courtesy of Maryland for his wife’s inheritance, the partie claiming shall averre or make such prooffe as the court shall think fit, that he or she is the widow, husband, or heir of the last tenant upon record, or that he or she is lord of the fee, and that the last tenant upon record died without heir. And if the partie clayme by matter of record, grant, deed, or legacie, the partie clayming shall alledge the matter of record, or exhibit the grant, deed, or testament by which he claims, upon which clayme so entered the partie clayming may enter upon the land so claymed, if no other be possessed thereof.

And at the next county court, or otherwise at the next hundred court, (if the land claymed be a freehold only,) the register of the said county or hundred court shall proclaime and publish the said claime of the partie, and such proclamation shall be continued and renewed in open court once at least in every year for three years together, and if within that space no matter be alledged by any person to the contrary, the partie clayming shall be entered tenant upon record to the land so claimed, and such entry upon record shall be a barre for ever to all other persons whatsoever from claiming the said land, other than such as shall claime by from or under the partie so admitted upon record. Provided, that the nearest heir living within the province and claiming or entring upon any land shall not be admitted tenant upon record till after ten years, according to the statute in that behalf provided, entitled, an act for the descending of land, and that the lord proprietary nor lord of the fee shall not be admitted by escheat for want of heirs living within the province until after ten years, likewise according to the statute aforesaid, any thing in this act to the contrary notwithstanding. This act to continue to the end of the next general assembly.” Taken from *Lib. C. and WH.*, p. 32.

NOTE (XXXVIII.) p. 160.

“An act for limiting the time of servants.” (1638–9, No. 35.)

“Be it enacted by the lord proprietarie of this province, of and with the advice and approbation of the freemen of the same, That all persons being christians,

(slaves excepted,) of the age of eighteen years or above, and brought into this province at the charge and adventure of some other person, shall serve such person at whose charge and adventure they were so transported for the full term of four years only, to commence from his or their arrival in the province, (except any other time were contracted for by covenant.) And the charge shall be accompted and adjudged [to] that person by whom or whose order the passage money was paid to the master or merchant.

And all persons under the age of eighteen years transported into this province at the charge and adventure of some other person, shall serve such person at whose charge he or they were so transported, until such person or persons so transported shall be of the full age of four and twenty years, (except likewise any other time were contracted for by covenant.)

And every maid servant being christian, (except as before excepted,) of the age of twelve years old or under, shall be bound to serve the partie or parties, transporting her or them, for seven years; and if she be above the age of twelve years, she shall serve for four years only, (except it were otherwise conditioned by covenant,) and at the end of any of the said termes of service expired, the master or mistress of such servant, (at the time when the said term is expired,) shall give unto such man or maid servant such conditions as were covenanted by the indentures or first covenants, or (in default of such covenant,) shall give unto them three barrells of corn, a hilling hoe, and a weeding hoe, and a felling axe; and to a man servant one new cloth suite, one new shirt, one pair of new shoes, one pair of new stockings, and a new Monmouth capp; and to a maid servant, one new pettycoat and waistcoat, one new smock, one pair of new shoes, one pair of new stockings, and the cloaths formerly belonging to the servant. This act to continue till the end of the next general assembly." Taken from *Liber C. and WH.*, p. 59.

NOTE (XXXIX.) p. 166.

Prior to the commission appointing Mr. Giles Brent commander of the isle of Kent, it may be proper to state, that soon after the passage of the act of 1638-9, ch. 2, sect. 8, and the bill entitled, "an act for military discipline," recited in the preceding chapter, a commission issued to the same gentleman appointing him "captain of the military band," for the purpose, as it would appear, of carrying into effect, these legislative proceedings relative to the militia. As Mr Brent was a man of the first rank in the province during his time, these commissions to him seem to assume the importance of state papers, the exhibition of which it would be improper to omit, especially as they illustrate the military proceedings of the province at this period of time.

Commission to Mr. Giles Brent, appointing him "captain of the military band."

"Cecilius, &c., to our dear and faithful councillor Giles Brent, esqr., of St. Mary's in our province of Maryland, greeting. Whereas the military band of our colony of St. Mary's is now destitute of a captain to lead and command them and to exercise them in the military discipline, we, much relying upon your diligence, skill, and knowledge, have thought fit to commend unto yourself that care and charge, and therefore we do hereby constitute and ordain and appoint you to be captain of the said military band next under our lieutenant general, and to be henceforth called and esteemed, authorizing and withal requiring you according to the trust and charge belonging to that place to train and instruct all the inhabitants of our said colony able to bear arms, (those of our council excepted,) in the art and discipline of war on holydays and at any other time when there shall be need, and by yourself or your serjeant or other officer, once in every month if you shall find it needful, to view at every dwell-

ing house within the said colony the provision of necessary arms and ammunition, and where you find any defect to amerce the party failing at your discretion, so that it exceed not 30 lb. tobacco for one default, and further to punish any delinquent in any kind offending against the discipline military, and with the consent or direction of our lieutenant general to use, appoint, and command all power and means necessary or conducing in your discretion to the safety or defence of the province in as ample manner and with as ample and full power to all intents and purposes as any captain or commander useth or of right may or ought to use by virtue of his office of captain. Witness our dear brother Leonard Calvert, esqr.—Given at St. Mary's this 29th of May, 1639."

From "Council Proceedings from 1636 to 1657," p. 38.

Commission to Mr. Giles Brent, appointing him "commander of the isle of Kent."

"Cecilius, &c. to all persons, &c., know ye, that we, reposing especial trust and confidence in the fidelity and wisdom of captain Giles Brent, esqr., one of the council of our said province, have constituted and appointed, and by these presents do constitute and appoint the said Giles Brent to be commander of our isle of Kent within our said province, to rule and govern the inhabitants and all other persons for the time being or which shall be within our said island according to the powers hereafter committed to him, that is to say, in all matters of warfare by sea and land necessary to the training of soldiers and levying of them upon all occasions to the resisting of the enemy or suppressing of mutinies and exercising of martial discipline within or about the said island, to do all such things as to a captain do belong by the law of war, and in all causes civil wherein right or damages is demanded by or of any inhabitant of that island to cause right and justice to be done according to the laws or laudable usages of this province, or otherwise according to the laws or laudable usages of England in the same or the like causes as near as he shall be able to judge, and to try all the said causes, and to use, command, and appoint all power and means necessary or conducing to the doing of right and justice as aforesaid, and in all causes criminal prosecuted for correction, not extending by the laws of England to the taking away of life or member, to try and censure all the aforesaid offences and offenders in any punishment as he shall think the offence to deserve and to elect and appoint all necessary officers for the execution of the power hereby committed unto him, and to use exercise and execute all or any other power or powers for the conservation of the peace within that island as may be exercised by any justice of peace in England by virtue of his commission or the law of England, and for the better assistance of the said Giles Brent in the execution of the premises we have appointed our beloved friends William Brainthwayte, gent., captain John Boteler, and Thomas Adams gent., inhabitants of the said island to be aiding and assisting to him both in their council and otherwise to the uttermost of their skill and power to which end we likewise require the said Giles Brent to consult and advise with them on all occasions of importance. Given at St. Mary's, 3d of February, 1639. Witness our dear brother, &c."

From "Council Proceedings from 1636 to 1657," p. 43.

NOTE (XL.) p. 176.

"An act touching tobaccoes."

(As it is abridged in Bacon's Collection of the Laws, 1640, ch. x.)

"By this ancient inspection law, made within eight years from the first settlement of the colony (so early a regulation of the staple being found necessary) it was enacted. (1.) No tobacco to be exported, till sealed by a sworn viewer, on pain of treble forfeiture. (2.) The commander of every county to appoint and swear three viewers in every hundred. (3.) Any person might demand a

viewer to view any tobacco wherein he might have interest, paying the fee. (4.) If any exception was taken at the viewer's judgment, the owner of the tobacco was to name one, the creditor or viewer another, and (if they dissented) the commander to name a third, which two or three should determine the question. (5.) Bad tobaccos were to be judged, ground leaves, second crop leaves, notably bruised or worm eaten, or leaves house burnt, frost bitten, weather beaten in the house, sooty, wet, or in too high case, so that the viewer, upon his conscience, might reasonably think, that it was not likely to last sound till midsummer following. (6) Where a hogshead was found bad for the greater part, it was to be burned; where, for the less part, the owner was to forfeit four fold the quantity of the bad (so as it exceeded not the quantity in the case or chest) one half to the viewer, the other half to the lord proprietary. (7.) The viewer to have, for viewing, two pounds of tobacco per hogshead; for receiving, four pounds; and for burning, ten pounds of tobacco per hogshead. (8.) All cases and offences against this act, to be determined, &c., by the lieutenant general and council, or by the commander and assistants of any county, &c."

See also the record book in the office of the present court of appeals, entitled *Liber C. & WH.* p. 70.

NOTE (XLI.) p. 185.

The following document, relative to an election in England, illustrates that stated in the text. [Taken from the *Annual Register*, from the year 1769, p. 152.]

"To our much honoured and worthie friend, J. H. esqr., at his house at Kelston near Bathe.

"WORTHIE SIR,—Out of the long experience we have had of your approved worth and sincerity, our citie of Bathe have determined and settled their resolutions to elect you for burgess of the house of commons, in this present parliament, for our said citie, and do hope you will *accept the trouble thereof*; which if you do, our desires is, you will not fail to be with us at Bathe, on Monday next, the eighth of this instant, by eight of the clock in the morning, at the furthest, for then we proceed to our election. And of our determination we intreat you to certifie us by a word or two in writing, and send it by the bearer to your assured loving friends,

JOHN BIGG, the Major,
WILLIAM CHAPMAN."

Bathe, Dec. 6, 1645.

NOTE (XLII.) p. 186.

"*An act for measures.*" (1641, ch. 2.)

"Whereas the want of a sett and appointed measure whereby corne and other graine might be bought and sold within this provinee doth daily breed inconveniences in passing thereof from man to man amongst the inhabitants thereof; Be it enacted by the lord proprietarie of this province by and with the assent and approbation of the freemen of this province, that from henceforth the measure used in England called the Winchester bushel be only used as the rule to measure all things which are sold by the bushel or barrel and all under proportions of dry measures to the bushel. The barrel to contain five of the said bushell and no more or lesse; And that within forty days next after the proclamation of this act in every county the sheriff shall procure a good bushell to be made and syzed as above, and shall have a seal whereby he shall seal that and all other measures by, which bushell and seal the sheriff shall have always in his custody as a rule whereby others shall be syzed and sealed which are to be used in buying and selling within the province and at the expiration of his office shall deliver the said measure and seal to his successor to be kept as aforesaid.

And every partie convict to have sold by any bushell or lesse or greater measure unsealed or differing from the foresaid after the feast of all saints next shall pay treble damages to the parties grieved and a fine of one barrell of corne to the lord proprietarie. Provided likewise that for every bushell so syzed and sealed by that in the sheriff's keeping, the sheriff for his fee shall have from the parties whose bushell is, four pounds of tobacco. This law to continue for two years next after the day of this session."

Taken from *Lib. C. & WH.* p. 72.

NOTE (XLIH.) p. 205.

"Conditions propounded by the right honorable Cecilius Lord Baltimore, lord proprietor of the province of Maryland in the parts of America to such persons as shall adventure or go to plant in the province aforesaid, which conditions are to begin from the feast of the Annunciation of the Virgin Mary, 1642, and to continue until new or other conditions of plantation for the said province, shall be published under his lordship's hand and seal within the said province.

Imprimis. What person soever being of British or Irish descent that shall be at the charge to transport into the province of Maryland, himself or his deputy, with any number of able men, between the ages of sixteen and fifty years of age, of the descent aforesaid and furnished with arms and ammunition according to a particular hereunder exprest, or any number of women between the ages of fourteen and forty-three, shall be granted unto every such adventurer, for every twenty persons he shall so transport thither, in one year, a proportion of good land, within the said province, containing, in quantity, two thousand acres of English measure which said land shall be erected into a mannor and be conveyed by grant under the seal of our said province to him or her and his or her heirs forever in soccage tenure with all such royalties and privileges as are usually belonging to mannors in England rendering and paying yearly unto his lordship and his heirs for every such mannor a quiet-rent of forty shillings sterling per annum to be paid in the commodities of the country and such other services as shall be generally agreed for publick uses and the common good.

Item.—What person soever of the descent aforesaid shall at his or her own charge transport him or herself and any lesser number of persons men or women than twenty of the descent aforesaid and aged and provided as above said he or she shall have assigned to him or her and his or her heirs and assigns for ever for and in respect of him or herself and every such person as aforesaid fifty acres of land within the said province to be holden of some manor of his lordship's within the said province in free soccage paying therefor yearly a quiet-rent of twelve pence sterling per annum to his lordship and his heirs for every fifty acres in the commodities of the country as aforesaid.

Item.—Any person of the descent aforesaid that shall at his or her own charge transport thither any children of the descent aforesaid that is to say boys under the age of sixteen years and girls under the age of fourteen years shall have granted to them and their heirs for and in respect of every such child to be transported as aforesaid twenty-five acres of land within our said province to be holden of some manor of his lordship's within the said province as aforesaid under the yearly rent of sixpence sterling for every twenty-five acres to be paid as aforesaid.

Item.—Every person whatever that shall claim any proportion of land in the said province of Maryland by virtue of the conditions aforesaid, shall pass a grant of the said land so due to him, her, or them as aforesaid, under the seal of the province aforesaid within one year next after the said lands shall be due unto them and assigned and set forth in some part of the said province by his lord-

ship's lieutenant general there or in default thereof they shall by virtue of these conditions lose their rights unto the said lands for ever.

A particular of such arms and ammunition as are intended and required by the conditions above said, to be provided and carried into the said province of Maryland for every man between the ages of sixteen and fifty years which shall be transported thither.

Imprimis.—One musket or bastard-musket with a snap-hance lock.

Item.—Ten pound of powder.

Item.—Fourty pound of lead bullets, pistoll and goose shot, each sort some.

Item.—One sword and belt.

Item.—One bandelier and flask.

Dated at London tenth day of November, 1641.

C. BALTIMORE."

[Taken from "Council Proceedings from 1636 to 1657," p. 81.]

NOTE (XLIV.) p. 205.

It may not, perhaps, be useless to every reader to observe, that a degree of latitude does not consist of a single mathematical point, but, according to the best English computations, extends in breadth on any given meridian, from south to north, sixty nine miles and a half. Although French and other European astronomers have slightly varied from this computation, ascertained as early as the year 1635, by Mr. Norwood, an Englishman, who then measured a degree on the surface of the earth between London and York, yet the learned surveyors and astronomers—Messrs. *Mason* and *Dixon*, in the year 1764, when they commenced the running and settling the division-lines and boundaries between Maryland and Pennsylvania and the three lower counties, as they now stand, assumed *Norwood's* measurement of a degree of latitude, as a datum upon which they founded their observations and calculations, as appears from their journal now before me. They then ascertained also, (as stated in their journal,) that "the latitude of the south point of the city of Philadelphia, is $39^{\circ} 56' 29''$ 1 north." Supposing then, that the northern limits of Maryland extended to "where New England is terminated," (as expressed in lord Baltimore's charter,) and the charter of New England, (of November 3d, 1620,) commenced the south bounds of New England "from the fortieth degree," which is *exclusive*, it necessarily followed, that the whole of the fortieth degree to the commencement of the forty-first, "where New England was terminated," was within the limits of Maryland. The Marylanders, then, might have, with perfect propriety, seated themselves not only on the Schuylkill, south of the forty-first degree, as they were now doing, but to the same extent on the Delaware, and taken possession of the spot where Philadelphia now stands.

NOTE (XLV.) p. 206.

Smith, in his History of New York, (from whom, what is here stated in the text is taken,) has not given us a copy of the *instructions* to Alpendam, which he mentions, from whence we might have received *Kieft's* ideas of the *right* of the Dutch "to the soil and trade" on the south river. His successor, in the government of New Netherlands, Peter Stuyvesant has, however, in his negotiation with the governor and council of Maryland, in the year 1659, entered very fully into a discussion of their *right*. It would be improper, at this period of our history, to anticipate this negotiation by any long quotation from the record thereof, except in merely stating, that, besides his fanciful suggestions, that the Dutch derived their right to New Netherlands by reason of Columbus's first discovery of America, they being then subjects of Spain, (this, perhaps, as a sett-off against the English right of discovery under Cabot,) and that king James,

when he divided Virginia into north and south, purposely left a space between these divisions for the Dutch, (although that division was in 1606, and Hudson's voyage in 1609,) he more particularly states, in his letter to the governor of Maryland, that "their undoubted right can be shewed by patten of the high and mighty lords states general granted to the noble lords overseers of the West India company,—further, by bargain and sale and deeds of the natives,—and possession above these forty years." This, by calculation back, would bring the time of their first possession to the year 1619. But this same Stuyvesant, some years afterwards, in his letter to Richard Nicolls, in 1664, when he surrendered up his province, mentions, that they had *then* enjoyed "the South river forty years." So little accuracy was there in this governor's statements! In this last mentioned letter also, he acknowledges, that the Dutch had no patent for the lands on South river until the year 1656. More credit, however, is to be attached to another part of Stuyvesant's statement in his before mentioned negotiation with the governor of Maryland, and which seems to explain what Kieft meant by saying, that the Dutch possession of South river was "sealed with their blood." "And as for the South river or as it is called by the English Delaware in the particular: The said river was in the primitive tyme likewise possessed, and a collony planted in the western shore within the mouth of the south cape called the Hoore Kill to this day. The Dutch nation erecting there and all over the country their states' armes and a little fforte, but after some tyme they were *all slained and murdered by the Indians*. Soe that the possessions and propriety of this river at the first in his infancy is *sealed up with the blood of a great many sowles*. After this in the yeare 1623 the fforte Nassaw was built about 15 leagues up the river on the eastern shore," (according to *Proud*, Hist. of Pennsylvania, vol. 1, p. 110,—near *Gloucester* in New Jersey,) "besides many other places of the Dutch, and the Dutch Swedes to and againe, untill it thought the governor generall and counsell good to remove the said fforte Nassaw in the year 1650 downwards to the westerne shore againe, and there to fix a town as it is to this day;"—at the same place as that now called *New Castle*.—(See the above mentioned negotiation at large in the record book in the council chamber, Annapolis, entitled, "Council, HH, 1656 to 1668," p. 43.) From all which a short historical summary of the colonization of the Dutch and Swedes on South river, may be thus deduced to the year 1642.

That the Dutch had commenced a *trade* with the natives on the South river soon after their first permanent settlement on the North river in the year 1614, and for that purpose had occasionally fixed up small stockade forts, with, perhaps, small temporary habitations therein, at divers stations on the south river; but these traders being harassed by the Indians and "all slained and murdered," their successors in the trade were driven from the west side of the Delaware, and constrained to erect a fort on the *east* side thereof, near Gloucester, in New Jersey, in the year 1623, calling it fort Nassaw. This corresponds with what is stated in *Holmes's Annals*, (*sub anno*, 1623,) under the authority of governor Bradford, to wit, "that the Dutch had traded in those southern parts several years before he and the other English adventurers came to Plymouth," (which was in 1620,) "but that *they began no plantation there until after this time*." The Swedes, arriving in 1627, were more successful in preserving peace and friendship with the Indians; but do not appear to have fixed any permanent settlement on the south river, until the year 1631, when they built a fort, laid out a town, and fixed a settlement at the confluence of the Brandywine and Christina creeks, near Wilmington. In the year preceding that, (in 1630,) they had, it seems, some quarrel with the Dutch about the land or fort at Hoarkill, now Lewistown. In 1631 also, the Swedes built a fort on an island called *Tenecum*, in the river Delaware, sixteen miles above New Castle, which they called New Gottemburg;

here their governor, *John Printz*, had a fine settlement, which was named *Printz's Hall*; and on the same island the principal settlers are said also to have had plantations. The Swedes proceeded thus prosperously, but having in 1638 fixed a settlement or rather a factory for trade on the eastern bank of the Delaware at a place called by them *Elsinburgh*, near *Salem* in New Jersey, the Dutch could bear it no longer, and *Kieft*, their governor, wrote the remonstrating letter thereon to *Minuits*, as stated in the text. It appears, however, that *Minuits* was not the governor of the Swedish settlements on the south river, as is supposed by *Smith*, in his *History of New York*, (if it be true, as stated by *Proud*, in his *Hist. of Pennsylvania*—that *Printz* continued to be governor of the Swedes on the Delaware from his arrival till about the year 1654, when he returned home to Sweden,) but *Minuits* was only the principal factor of a trading company of Swedes, who had erected the fort at *Elsinburgh*. This supposition corresponds also with the statement of the anonymous Dutch author quoted by *Smith* in a note to this passage in his *History*. *Minuits*, however, continued his possession of *Elsinburgh*, and in this state the affairs of the Dutch and Swedes seem to have remained until the year 1642, the period of time of which we are now treating. The preceding summary will tend much to elucidate the subsequent fraudulent transactions, by which lord Baltimore's province became whittled down to the narrow limits of its present state.

NOTE (XLVI.) p. 220.

"An act determining what shall be judged a lawful tender.

It shall be judged a sufficient tender of tobacco in any debtor if he tender it at some place within the county where the debtor dwells, (except it be otherwise agreed) upon the day when it is due or otherwise if after the striking of it at any time before the 16th day of March he warne the creditor or his attorney in the county to come and receive it and after 20 days after such warning (or in case the creditor nor his attorney be in the county to be warned) then after 20 days after such striking in the presence of two or more credible freemen that may make oath of the soundness and weight of the tobacco he weigh and mark the tobacco to the use of the creditor after which time it shall remain as the proper goods of such creditor, and any party privy other than the creditor (or some other by his consent or appointment) using hearming or taking away such tobacco after such tendure made shall make fine and pay treble damages to the party grieved. This act to endure till the end of the next assembly."

Taken from "Lib. C. & WH." p. 102; and noticed in Bacon's Laws, as "1642 ch. 30."

NOTE (XLVII.) p. 225.

"An act for the forms of proceedings in causes. [1642, ch. 10.]

Every judge and court authorized or allowed by the lord proprietarie or the law of the province shall or may have and use all necessary and sufficient power for the administration of justice and doing or causing right to be done to all persons, and appointing the formes and means of it, and awarding all necessary processe to that end in such forme and unto such effects and under such reasonable penalties as the judge or court shall think fit, guiding themselves as near as conveniently they may to the former precedents and usages of the court, and in defect thereof to the formes of England in the same or the like cases, except where any thing is specially provided by the law of the province. This act to endure till the end of the next assembly."

Taken from "Lib. C. & WH." p. 85.

NOTE (XLVIII.) p. 225.

"An act ordering some things touching the tryall and judging of causes." (1642, ch. 11.)

"The judge may administer an oath to either party in any civil cause for the

better investigation of the truth, and upon any one's refusal may proceed against him as if he had confessed the matter enquired of him by oath. The defendant in any cause civil or criminal may put himself for trial upon the judge or court, or upon his country, or may wage his law in cases allowable by the law of England; if both parties join in the tryall it shall be tried according to their agreement. If either party desire to be tried by the country, and put in security to pay the charge of the jury, the issue shall be tried by the oath of 12 freemen returned by the sheriff and thought fit by the judge to be admitted upon the exception of either party. And if the other party joined not in the trial by the country, he that caused the jury shall defray the charge of it, without putting it to costs; except that in criminals extending to losse of life or member the offender may demand to be tried by the jury, without putting in any security for the charge. The sheriff in awarning of juries shall observe a certain course and order of turnes among all the freemen of the county, (the counsill or commissioners only excepted,) to which end the writ for warning the jury shall not be returnable until 15 days at the least after the delivery of it to the sheriff. And the sheriff upon receiving any writ may award out precepts to any his under sheriff or bailiffe in any hundred or division to the effect of the writ, which precept shall be of force to all persons, and the return of such under sheriff or bailiffe may be returned by the sheriff. Wageing of law against an accompt book shall be admitted according to the sound discretion of the judge. Where any executor or administrator is party to the action, the judge may admit such proof as he shall think necessary and sufficient according to the case. This act to endure till the end of the next assembly."

Taken from "Lib. C. & WH." p. 85.

NOTE (XLIX.) p. 225.

A clause in the act of 1642, ch. 12, entitled "an act touching verdicts and judgments."

"If the judge think any verdict grievous to either party, or exceeding the issue committed to their inquiry, he may return them to consider better of it, or charge another jury with it, at the instance of either party desiring it and undertaking the charge. To which end the point in issue shall be delivered to the jury in writing underneath it, which shall be kept upon a file by the clerk of the court for the justification of his entry. And if the judge find the jury evidently partiall or wilful, he may charge another jury to enquire and try by the same evidence. And, if they find contrary to the former jury, all the former jury may be fined at the discretion of the judge. This act to endure till the end of the next assembly."

Taken from "Lib. C. & WH." p. 86.

NOTE (L.) p. 226.

"An act touching succession to land." (1642, ch. 17.)

"Where any one dyeth seised of land in fee, not disposing of it otherwise by his last will, the next heir shall succeed as hath right by the law of England. In defect of such heir the nearest heir living within the province may enter upon the land and hold it for the use of such next heir. And if none nearer enter or clayme in 7 yeares he shall hold it in the same right and estate as if he had been next heir; And in defect of all such heirs living within the province the lord proprietarie may enter and hold the land in such manner as is afore appointed for nearest heire; And the widow shall succeed to the thirds of the lands and to the mansion house to hold it during her widowhood as her husband was seised of at any time during the coverture in such manner as she may by the law of England. To endure till the end of the next assembly."

Taken from "Lib. C. & WH." p. 95.

NOTE (LI.) p. 234.

The new commissions of 1642, for the government of the province.

THE GOVERNOR'S COMMISSION.

“Cecilius, lord and proprietor of the provinces and countries of Maryland and Avalon in the parts of America, lord baron of Baltimore, &c., to all and singular persons to whom these presents shall come, greeting,—Know ye that we, for divers special considerations us thereunto moving have revoked and determined, and by these presents do declare, that we do hereby revoke and absolutely determine all former commissions heretofore granted unto our dear brother Leonard Calvert, esq., or to any other person whatsoever for or concerning the government of our said province of Maryland, and all power and authority by us thereby granted unto him or to any other of our council, or to any other person or persons whatsoever, in and by the said commissions or any of them, and we do hereby likewise discharge all and every person and persons whatsoever from our council, and to be of our council within the said province of Maryland, which heretofore have been of our council there.

Former commissions revoked.

Nevertheless considering and well knowing that the people there cannot subsist and continue in peace and safety without some good government to be ordained and established as well for the cherishing of the virtuous and orderly, as for the punishment of the lewd and disorderly persons there, and calling to mind the faithful and laudable services done by our said dear brother Leonard Calvert, esq., as well in the adventure of his person in the first descent and settling of our colony within our said province of Maryland, as in the ordering and advancing of the same by his personal residence within the same our said province, wherein he hath manifested to the satisfaction of ourself and of our colony there, such wisdom, fidelity, industry and other virtues, as render him capable and worthy of the trust hereby by us intended to be reposed in him, have nominated, constituted, ordained, authorised, established, and by these presents do nominate, constitute, ordain, authorise and establish, the said Leonard Calvert in the absence of us and our heirs, our lieutenant general, admiral chief captain, and commander, as well by sea as by land, of our said province of Maryland and the islands to the same belonging, and we do by these presents grant unto him the chief commandment and absolute authority above and in all matters of warfare by sea and land, to execute and administer the same to the resistance of the enemies or suppression of mutinies and insolencies, as our said lieutenant shall think most commodious for the preservation of our said province, and to do all such things as do belong or appertain to the office of a general, admiral, chief captain and commander, in as large and ample manner to all intents and purposes as we ourself might do, if we were personally present by force or virtue of the letters patent to us granted by our sovereign lord, king Charles, under the great seal of England, bearing date at Westminster, the 20th day of June, in the 8th year of his majesty's reign, to have, hold, execute and administer the same with such and as ample power and authority, as if we were personally present, might do or execute the same by force or virtue of the letters patent aforesaid, until we shall signify our pleasure to the contrary.

Leonard Calvert to be lieutenant general, &c. &c.

And we do hereby further ordain and command all such as shall hereafter be sworn of our council within our said province of Maryland, all captains, officers and soldiers, as well by sea as by land, whom it doth or may concern, all our officers, receivers, bailiffs, marshalls, and all other inhabitants of our said province of Maryland, of what quality and condition soever, that they and every of them do acknowledge the said Leonard Calvert in the quality of lieutenant general, admiral, chief captain and commander, over all our foresaid province of Maryland and the islands and members of the same, and do honour, respect and obey him as they ought to do, upon pain of such punishment to be inflicted upon

This commission to be proclaimed within the province.

them and every of them, as such a high contempt as the disobedience and neglect thereof shall deserve, and to the end that no man shall pretend ignorance, we do command this our commission and ordinance to be proclaimed and published within our said province, at the places accustomed to proclaim and publish any our edicts and ordinances commanding him our said lieutenant to proceed with rigour against all contemners and neglecters of the same in such strict and severe manner as we ourself might do by force and virtue of the said letters patent, if we were there personally present, and that without favour and connivance.

Leonard Calvert to be chancellor, chief justice, &c.

And we do further by these presents make, constitute, ordain and establish the said Leonard Calvert to be our chancellor, chief justice and chief magistrate within our said province, untill we or our heirs shall signify the contrary under our hand and seal; and we do hereby give him power, from time to time, to appoint and constitute officers and ministers, for the administration and execution of justice, and for doing and executing of all other things whatsoever, which belong to the establishing and government of a good and happy commonwealth within our said province.

Power to him to call assemblies.

And we do further by these presents grant unto him our said lieutenant, chancellor, chief justice, and chief magistrate, full and absolute power and authority, when and as often as he shall think fit to call and summon one or more general assembly or assemblies of the freemen of our said province, or their deputies, at such place or places within our said province, as he shall think fit, for the consulting, preparing and enacting of wholesome laws and ordinances, for the government and well ordering of the said province, and people within the same, to which purpose we do hereby grant full power and authority unto our said lieutenant general, chancellor, chief justice, and chief magistrate, from time to time, in every general assembly, to be summoned by him in the said province of

And to assent to laws.

Maryland, in our name, stead and place, to give assent and consent unto all such laws and ordinances as he our said lieutenant general, chancellor, chief justice, and chief magistrate shall think fit and necessary for the good government of our said province of Maryland, and which shall be consented unto and approved of by the freemen of our said province, or the major part of them, or their deputies, to be assembled by him the said lieutenant general, chancellor, chief justice, and chief magistrate, there from time to time, for the enacting of laws within that province, Provided that the said laws so to be assented unto by him, our said lieutenant general, chief justice, and chief magistrate there, in our name, be, as near as conveniently may be, agreeable and not contrary to the laws of England; every which law so to be assented unto by him our said lieutenant general, chancellor, chief justice, and chief magistrate there in our name, and consented unto and approved of by the freemen or their deputies, or the major part of them as aforesaid, we do hereby declare, shall be in force within the said province, till we or our heirs shall signify our or their disassent thereunto, under our or their hand and seal, and no longer, unless after the transmission thereof unto us or our heirs, and due consideration had thereupon, we or our heirs shall think fit to confirm the same under our or their hand and seal.

Such laws to be no longer in force after his lordship's disassent thereto.

Power to the lieutenant general to adjourn, &c. assemblies.

And we do by these presents grant full power and authority unto our said lieutenant to adjourn, prorogue and dissolve all and every such assembly and assemblies, by him heretofore called, or hereafter to be called at his pleasure.

Power to him to publish edicts and proclamations.

And forasmuch as the calling of a general assembly of the said freemen, and the consulting about and enacting of laws, will require long time and much consultation, and many times sudden and other necessary occasions may happen or fall out, which require a speedy remedy; we do therefore hereby grant unto him our said lieutenant, full power and authority, from time to time, to make, constitute, ordain and publish in our name, such reasonable and profitable edicts and

proclamations within our said province of Maryland, with reasonable pains and penalties therein to be expressed, to be duly inflicted on all offenders against the same as he our said lieutenant in his discretion shall think fit, and as by our letters patent above mentioned, is and are warranted, Provided, that such penalties do not extend to the taking away the rights or interests of any person or persons of or in their life, members, freehold, goods or chattels, nor be repugnant or contrary, but agreeable, as near as may be to the laws established within the realm of England, and to the laws and ordinances established, or to be established, within our said province of Maryland, all which edicts and proclamations shall stand in force only and untill we or our heirs shall signify the contrary, under our or their hand and seal to him our said lieutenant and the people there, or that he our said lieutenant shall, in his discretion, think fit to repeal the same, or that the same be repealed in a general assembly of the said freemen, or their deputies, to be called and assembled as aforesaid, with the consent of our said lieutenant.

Proviso,
strictly limit-
ing the extent
of such edicts

And further we do hereby grant full power and authority unto him our said lieutenant, to appoint from time to time, fit places for public ports for lading, shipping and unlading, and discharging of all goods and merchandizes, to be imported or exported out of our said province, and to appoint officers and ministers in the same places and ports, and also to erect and establish convenient places for the holding and keeping of fairs and markets, and to establish markets and fairs to be there held upon certain days, for that purpose to be by him appointed.

Power to him
to appoint
public ports,
fairs and
markets.

And we do further by these presents grant full power and authority unto him our said lieutenant, (if he see cause) to pardon and remit in part, or in the whole all pains, forfeitures or penalties, which any person or persons within our said province shall incur for any crime, misdemeanor, or offence against any the laws, ordinances, or orders whatsoever, made or to be made for the good government of our said province, and to grant pardons for all and every such delinquents in our name, under our great seal of our said province, so as such pardon or pardons extend not to the pardoning of high treason.

Power of
granting par-
dons and of
remitting for-
feitures.

And further we do by these presents [grant full power and authority unto him our said lieutenant]* commit the custody and keeping of our great seal of our said province unto him our said lieutenant, And we do hereby grant unto him our said lieutenant, power and authority for us and in our name to pass and grant under our said great seal, all writs and processes, all commissions as well for authorising such person and persons to be of our council there, as we shall from time to time appoint by warrant or direction, under our hand and seal, as for the execution of justice, and for dividing and bounding of lands, all pardons, licenses, and all other public acts and deeds whatsoever, which shall at any time pass within our said province.

Lieutenant
general to be
keeper of the
great seal.

And we do further hereby grant full power and authority unto him our said lieutenant, for us and in our name to pass and grant, under our great seal, to such person and persons such proportion and quantities of land within our said province for such estate and interest, and with such privileges and immunities as have, since the 16th day of October, 1640, or from time to time shall give him our said lieutenant warrant from under our hand and seal, all which grants so to be made or passed, after the same grants and the said warrants under our hand and seal for the passing thereof, shall be enrolled by our secretary of the said province, for the time being, and not afore, we do hereby declare, shall be effec-

Power to him
to grant pat-
ents for lands.

* There is some error in the language here, but it is so in the record. The words which I have inclosed within brackets, appear to have been inserted through mistake by the person who entered it on the original record, or by him who copied it into the record book now existing. See the same clause in the subsequent commission of September 18th, 1644.

tual in law against us, and shall bind us and our heirs as firmly as if livery and seisin had been given and executed thereupon.

And to administer an oath to the councillors.

And because we hold it fit that some persons should be sworn of our council within our said province, for the better assistance of him our said lieutenant in the execution of the premises, and of the charge by us committed unto him, we do authorise and require our said lieutenant to administer the ordinary oath of a councillor to every such person and persons which shall hereafter be admitted of our council within our said province of Maryland, before such person and persons to be admitted of our said council with whom our said lieutenant shall from time to time advise, as he shall see cause upon all occasions concerning the good government of our said province of Maryland, and of the people there.

Lieutenant general to be sole judge of all causes criminal, (except where life, &c. are concerned,) and of all causes civil, (except in cases of free hold.)

And we do hereby grant full power and authority unto him our said lieutenant, to enquire, hear, determine, and finally to judge of and upon all causes criminal whatsoever, of what nature, kind, quality, degree or condition soever the same shall be, which may happen or arise within our said province of Maryland, as fully and absolutely as we ourself might do by force or virtue of the letters patent aforesaid, if we were personally present to give sentence or judgment of or in or upon the same (excepting only where the life or members of any person shall or may be inquired of or determined) and to award execution upon every such sentence or judgment, and also to hear and determine all civil causes, actions, suits and demands, both in law and equity, of or concerning any goods, chattels, contracts, debts, demands, or other personal or mixed action or actions, suit or suits whatsoever (excepting where the freehold of any person or persons shall come in question) in the most summary and equal way that he may, according to the orders, laws and statutes, of that our said province of Maryland, already made and established, or hereafter to be made and established, and in default of such laws established, or to be established within the said province of Maryland, then according to the laws and statutes of the realm of England, as near as he can or may judge or determine thereof.

Lieutenant general, with the council, judges of capital cases, and cases of freehold.

And where the life, member or freehold of any person or persons, shall happen to come in question within our said province of Maryland, we do hereby grant unto him our said lieutenant, and unto such persons as we shall from time to time, by commission under the great seal of our said province, nominate and appoint to be of our council within the said province of Maryland, or unto any three of them (whereof our said lieutenant to be always one) full power and authority to inquire, hear and determine thereof, according to the laws of our said province of Maryland, established or to be established; and in default of such laws there established, or to be established according to the laws of England, as near as they can judge thereof, and to award execution accordingly.

Power to the lieutenant general in case of his death or absence to appoint his successor.

And lastly, whereas the said lieutenant may happen to die or be absent for some time out of our said province of Maryland before we can have notice to depute any other in his place, we do therefore hereby grant unto him our said lieutenant full power and authority from time to time in such cases to nominate elect and appoint such an able person inhabiting and residing within our said province of Maryland as he in his discretion shall make choice of and think fit to be our lieutenant general, chancellor, admiral, chief captain, magistrate and commander as well by sea as by land of our said province of Maryland and of the islands to the same belonging and in as large and ample manner as we have by these presents authorised him our said lieutenant to govern for the present.

In case of his failure to do so, the council to appoint one of their own body thereto.

And in case our said lieutenant shall happen to die or be absent out of our said province of Maryland and shall fail to make choice of nominate and appoint some person to be our lieutenant general admiral chancellor and chief captain magistrate and commander of our said province of Maryland as well by sea as by land, we do hereby grant unto our councillors there for the time being or the

greater part of them full power and authority from time to time in every such case to nominate and elect and appoint such an able person which shall then be of our council there and inhabiting and residing within our said province of Maryland as they or the greater part of them shall make choice of and think fit to be our lieutenant general, chancellor, admiral, chief captain, magistrate and commander as well by sea as by land of our said province of Maryland and of the islands to the same belonging which person so to be chosen and appointed in any of the cases aforesaid we do hereby declare shall be our lieutenant general chancellor admiral chief captain and commander of our said province of Maryland during the absence of our said brother or untill we or our heirs shall signify our pleasure to the contrary, to which lieutenant general, chancellor, admiral, chief captain, magistrate and commander so to be elected nominated and appointed as aforesaid we do hereby grant the like power and authority in all causes and things as we have by these presents given and granted unto our said brother, hereby commanding our councillors, captains, soldiers, officers and ministers, for the time being, and the people of our said province of Maryland and all others whom it may concern to be obedient unto him in all things, matters and causes as we have in and by these presents commanded them to be obedient unto our said brother our present lieutenant general chancellor admiral chief magistrate captain and commander upon pain of such punishment to be inflicted upon them and every of them as such a high contempt shall deserve. Given under our great seal of our said province of Maryland at our Fort of St. Mary's within our said province on the fourth day of September Anno Dom. 1642.

The same 4th of September was the said commission published at the Fort of St. Mary's."

[Taken from "Council Proceedings from 1636 to 1657," p. 68 to p. 78.]

"Commission of the Council.

"Cecilius lord and proprietor of the provinces of Maryland and Avalon in the parts of America lord baron of Baltimore, &c. to our dear brother Leonard Calvert esq., our lieutenant general of our said province of Maryland and to our trusty and well beloved colonel Francis Trafford esqr., Thomas Cornwaleys esqr. John Lewger esqr. William Blount esqr. and John Langford esqr. greeting, know ye that we reposing especial trust and confidence in your wisdoms diligence and experience have assigned and appointed you jointly and every of you severally to be of our privy council within our said province of Maryland, and we do hereby give unto you and every of you full power and authority from time to time and at all times, until we shall determine or otherwise revoke this present commission, to assemble and meet together with our lieutenant general of our said province for the time being when and where he shall from time to time direct and appoint to treat consult deliberate and advise of all matters causes and things which shall be discovered unto you or be brought before you as well concerning the quiet government and regulating the people there as for the good and safety of our said province of Maryland and for the better and more peaceable government of our said province of Maryland we do hereby appoint and assign you and every of you (until we shall revoke or determine this present commission) to be our justice and justices commissioner and commissioners for conservation of the peace within our said province of Maryland and do hereby grant unto you and every of you (in case any breach of peace shall happen within your, or any, or either of your view, or in case you shall be informed of any breach of the peace full power and authority to arrest or call before you by your warrant to be directed to the sheriffs constables or other officers of counties towns villages and other places within our said province of Maryland all and every the offender and offenders against our peace and if you see cause to bind over the offender or offenders with a good surety or sureties to appear before our lieuten-

ant general and the council there to answer the same and in the mean time to keep the peace or be of the good behaviour as the case shall require and in default of such surety or sureties to be by such offender or offenders tendered unto you to commit the offender or offenders to the common gaol or next prison within the said province as to you shall seem fit there to remain until they shall find good surety or sureties as aforesaid or untill he or she or they shall be delivered by our lieutenant general or the council of our said province of Maryland or the greater part of them whereof our lieutenant general for the time being to be one.

And we do hereby further grant unto you and every of you full power and authority to attach and arrest or by your warrants to cause to be arrested and attached and to bring to due punishment all offender and offenders in weights and measures all forestallers of markets regrators ingrossers extortioners rioters and other offenders against the public welfare and peace of our said province of Maryland.

And we do hereby command all our sheriffs officers and ministers whatsoever that they and every of them be obedient unto you our said councillors and commissioners and every of you in all things as becometh. Given under the great seal of our said province of Maryland at our Fort of St. Mary's within our said province on the fifth day of September Anno Dom. 1642."

From "Council Proceedings from 1636 to 1657," p. 78.

"Commission of Secretary.

"Cecilius lord and proprietor of the provinces of Maryland and Avalon in the parts of America, lord baron of Baltimore, to all and singular persons to whom these presents shall come, greeting, know ye that we having had long experience of the abilities and industry of our trusty and well beloved councillor John Lewger, esqr. in performing unto us good and faithful service in our said province of Maryland and reposing especial trust in his wisdom diligence and experience have constituted appointed and ordained and by these presents do constitute appoint and ordain him the said John Lewger to be our secretary of our said province of Maryland and also judge of all causes testamentary and matrimonial within our said province.

And we do by these presents appoint, constitute and ordain the said John Lewger as well to be our principal officer and keeper of the acts and proceedings of us and our lieutenant general and council there for the time being and of and for the entring and recording of all grants by us or our heirs to be made of any lands or offices within our said province of Maryland and for the entring and recording of all other matters acts and things which by any instructions laws or ordinances made or given or to be made or given for or concerning our said province of Maryland shall or ought by the appointment of us or our heirs or by the appointment of our lieutenant general or other chief governor there for the time being or otherwise to be entered as recorded, as also our collector and receiver of all our rents revenues and customs and of all amerciements tolls profits and duties whatsoever already due or payable unto us within our said province to have and to hold execute and enjoy the said office and offices unto the said John Lewger during our pleasure.

And we do hereby promise and grant signify and declare that all and every acquittance or other discharge under the hand and seal of the said John Lewger shall be to all and every the people there within our said province a sufficient discharge for such rents customs profits and other duties which shall from time to time be paid unto him the said John Lewger for our use. Given under our great seal of our said province of Maryland at our Fort of St. Mary's within our said province on the fifth day of September 1642."

From "Council Proceedings from 1636 to 1657," p. 80.

NOTE (LII.) p. 263.

The lord proprietary's instructions to governor Brent.

“Whereas my dear brother Leonard Calvert, esqr., upon his departure out of the province of Maryland in April 1643, did by virtue of a commission from me dated 18th November, 1641, constitute Giles Brent, esqr., to be my lieutenant general of my province of Maryland during the absence of him the said Leonard Calvert out of the province or until I or my heirs should signify our pleasure to the contrary, these are to signify and declare that I do well approve of my said brother's act therein and in confidence of the fidelity and discretion of him the said Giles Brent I do hereby ratify and confirm the said Giles Brent to be my lieutenant general of the said province and to execute all other powers within the said province (except hereafter excepted) which were granted to my brother in the commission above mentioned during my said brother's absence out of the said province or until I or my heirs shall signify mine or their pleasure under mine or their hand and seal to the contrary, Provided nevertheless and I do hereby declare that I will not that the said Giles Brent shall assent in my name to any laws hereafter to be enacted in any general assembly to be held within the said province notwithstanding any thing contained in the commission above mentioned dated 18th November, 1641, or in any other commission whatsoever without further authority to be hereafter obtained for that purpose under mine or mine heir's hand and seal and in case any laws have been assented unto by him the said Giles Brent in my name in any general assembly which hath been held within the said province since my said brother's departure from thence, viz., since the first of April last, 1643, I do hereby declare my disassent to all and every such law or laws which have been assented unto or enacted within the said province in my name by the said Giles Brent, And because I intend by the grace of God to come in person myself into the said province at or before January next after the date hereof I thought fit also for divers reasons to suspend the granting of any more lands within that province till my arrival there when I shall take order to grant to every one their due who have any just right or claim from me of any lands within that province, and therefore I do hereby also restrain and revoke that power of granting any lands in my name by him the said Giles Brent under my great seal for the said province, and do hereby require him the said Giles Brent not to grant any accordingly without further order therein under mine or my heir's hand and seal any thing contained in the commission above mentioned dated 18th November 1641, or in any other commission whatsoever to the contrary in any wise notwithstanding, And whereas my said brother together with my secretary and surveyor general there did lately purchase (as I am informed) in my name and to my use the chapel of St. Mary's and the other buildings and land belonging thereunto, for the discharge of the price thereof my said brother together with my secretary and surveyor did (as I am informed) sign to three bills of exc. directed unto me all to one and the same effect for the payment of two hundred pounds sterling in England to captain Thomas Cornwaleys or his assigns (whose name it seems was thought fit to be used in that business although the said purchase was not made from him) the which bills by reason of some mistakes in that business I have thought fit not to accept, whereupon (as I understand) one or more of them are protested according to the usual manner in such cases, and whereas also (as I am informed) two other bills of exc. signed by the said captain Thomas Cornwaleys and directed to one Mr. Thomas Gerard and to Mr. Edward Harris or to one or both of them for the payment the one of thirty pounds sterling and the other of ten pounds sterling to my said brother, which bills are also (as I am informed) not accepted but protested also in the same manner as the other above mentioned, whereupon some directions may perhaps respectively be sent thither

“Published
23d Decem-
ber, 1643.”

to recover a satisfaction of all the said bills to the respective pretenders thereunto with costs and damages, but because for divers reasons true and right justice cannot be done therein without some advice, and testimonies from hence which cannot yet be had, therefore I thought fit and do hereby restrain the power of the said Giles Brent or any other person by authority derived from him to grant process or take cognizance of any suit or complaint whatsoever concerning all or any of the aforesaid bills of exc. or to give or pronounce any judgment therein any thing contained within the above mentioned or any other commission to the contrary in any wise notwithstanding, but to suspend any proceeding therein till my arrival there when I shall not fail to do unto every person equal right and justice therein and do thereby hereby require the said Giles Brent and all others whom it may concern to obey any order herein as they will answer the contrary at their utmost perills, and I do hereby require the said Giles Brent and my secretary there or one of them to cause this my declaration with all convenient speed after their or either of their receipt hereof to be recorded and published at the usual places of publishing orders within the said province for the government there. Given under my hand and seal the fourteenth day of July, 1648. C. BALTIMORE."

To Giles Brent, esqr., my lieutenant general of my province of Maryland and to my secretary and the rest of my council there and to every of them."

[Taken from "Council Proceedings from 1636 to 1657, p. 106.]

NOTE (LIII.) p. 269.

His lordship's commission "for his treasury in Maryland," and his instructions thereto annexed.

"*Locus* "Cecilius, &c., to all, &c., Know ye, that whereas heretofore I have
 ✠ made several authorities and directed one or more commissions to several persons in Maryland for the well ordering and disposal from time to time of my stock or stocks of neat and other cattle and of all other my goods and chattles there and also of all rents fines confiscations or escheats tributes or other gifts from the Indian customs or subsidies granted to me by any general assembly and all other profits and emoluments belonging to me within the said province of Maryland, and for the better managing clearing letting such farm or farms manor or manors or other lands set out and designed there for my particular use according to such directions and instructions as I should from time to time send thither for the purpose above mentioned, and whereas some of the aforesaid persons are since departed out of the said province whereby I may receive much prejudice in the neglect of that service, Wherefore I have thought fit out of the confidence I have of the integrity fidelity and good affection towards me of my trusty and well beloved Giles Brent, esqr., my lieutenant general of the said province of Maryland, John Lewger, esqr., my secretary, James Neal and Thomas Gerard esqr., all of my council there and William Brainthwayte, gent. to constitute and I do hereby constitute ordain and appoint them the said Giles Brent John Lewger James Neale Thomas Gerard and William Brainthwayte to be commissioners for my treasury within the said province, And I do hereby authorize them or any two of them (whereof the said Giles Brent to be always one) to take care of receive and dispose from time to time of all and every such things as are above mentioned belonging to me within the said province to my best advantage according to such directions and instructions as the said commissioners shall from time to time receive from me and in default thereof according to their best discretions and to appoint from time to time change alter or remove any such officers to receive my rents and other profits above mentioned there as also to look to my stock of neat cattle and for the better execution of all other the said premises and to allow such salary and wages

to be paid to them out of the profits above mentioned or sale yearly of some of my said neat cattle as they or any two of them (whereof the said Giles Brent to be always one) shall from time to time think fit and I do hereby ratify and confirm what the said commissioners or any two of them (whereof the said Giles Brent to be one) shall from time to time lawfully do in any of the premises as much as if I myself had been present and had done the same, willing and requiring the said commissioners and every of them that they or two of them at the least (whereof the said Giles Brent to be one) do send unto me a just and true account yearly of all such things above mentioned as are or shall from time to time become due unto me within the said province and of their proceedings in the same signed with their hands, and I do hereby revoke all former authorities and commissions which I have heretofore made or sent thither concerning the premises or any part thereof so far forth as they or any of them do concern the premises only or any part thereof and no further declaring, hereby that I shall not make good any contract or bargain for the future concerning any of the premises there but what shall be agreed unto by my said commissioners or two of them at least (whereof the said Giles Brent to be always one) which revocation I do require the said commissioners to notify unto the English inhabitants of the said province by causing this present writing to be published in the most usual places of publishing things of the like nature within the said province. In witness whereof I have hereunto set my hand and seal at arms at Bristol in the realm of England the 18th day of November *anno domi*. 1643.

C. BALTIMORE.

Instructions given by me Cecilius lord Baltimore to my commissioners for my treasury in Maryland dated the 18th day of November 1643.

1. Upon the receipt of these instructions I would have them cause a true inventory to be made as soon as conveniently may be of all my cattle which I would have from time to time marked duly with my mark and of all other goods and chattels whatsoever belonging to me within the said province of Maryland specifying therein in whose hands and in what places they are, and likewise a true rentall of all such rents as are payable unto me there in both which I require my secretary there to direct them and that the commissioners cause true copies of the said inventories and rentall to be sent (by the first opportunity) to me signed with two of their hands at least whereof the said Giles Brent to be one.

2. That they continue these goods of mine which were (by my directions) formerly put into Mr. Gilmett's custody still in his hands as long as he stays in Maryland or I give other directions concerning them but I would have the commissioners to demand and keep a note under Mr. Gilmett's hand of the particulars thereof as acknowledging them to be in his custody.

3. That all my carpenters and other apprentice servants there be sold forthwith for my best advantage which I understand will yield at least 2000 lb. tobacco a piece although they have but one year to serve especially if they be carpenters for I understand that 1500 lb. wt. of tobacco is an usual rate for the hire of one year's labour of any ordinary servant and I conceive it better to hire at a certainty such servant from year to year as my commissioners shall find necessary, to look to my cattle provide sufficient fodder for them and to manage my farm at West Saint Mary's and to pay their hire yearly out of such revenues and profits as shall become due to me there or in default thereof by the yearly sale of some of my stock there than to have servants apprentices there for that purpose and to send supplies yearly out of England to them.

4. That they allow unto Mr. Giles Brent yearly two steers out of my stock of neat cattle for his own expence in regard of his care of them and two steers yearly to Mr. Gilmett for his expence and two more together with 20 barrels of corn yearly (to be taken out of my quit rents there) and the use of six milch

kine to my secretary there for his care and pains in writing of the accompts yearly and in my other affairs there till I shall signify my pleasure to the contrary my said secretary being at the charge of keeping of the said six kine and of rearing the calves that come of them till they be weanable and then to deliver the said calves at my farm at West Saint Mary's to be put into my other stock of neat cattle, Provided always that the said secretary make such provision of fodder and housing for the said cows and calves in his custody for the winter as my said commissioners shall find necessary for them.

5. That they allow unto my lieutenant general Mr. Giles Brent for his pains and care in the government there the one half yearly of all fines, confiscations, wrecks, tribute from the Indians, customs or other gifts from the general assemblies there which shall grow due unto me during the time of his government under me there but I would have all such things as are mentioned in this article to be entirely charged upon their yearly accompts to me and the one half thereof discharged again upon the said accounts it being disposed of according to this my direction.

6. That they take care to cause such tobaccoes to be satisfied to my brother Leonard Calvert or his assigns as he or his assigns shall have disbursed or engaged themselves for my use there this last year which in case it cannot be otherwise I would have them done by sale of some of my neat cattle but I would have them know I do extremely desire to have my stock of neat cattle and sheep to be preserved as much as possibly may be and that they should not be any way diminished but when necessity doth absolutely require it and I would have the commissioners to be very careful that when there is a necessity of selling of any of my neat cattle it may be done with the least prejudice that possibly may be to the increase and good of my said stock for in so doing they will do me a very acceptable service which I shall acknowledge to them in due time.

7. That they use their best endeavours to discharge the bargain which was made this year for Mr. Copley's house at St. Mary's by letting him have his house and land there again and a reasonable consideration allowed unto him for Mr. Gilmett's time of being in it which I would have discharged out of somewhat of mine there and I desire that in case Mr. Copley will not be contented to let the house to Mr. Gilmett till midsummer which shall be Anno Dom. 1645 at some such reasonable rent as my said commissioners or any two of them (whereof the said Mr. Giles Brent to be one) shall think fit and that Mr. Gilmett's and his family's diett cannot be provided and discharged out of my stock and farm at West Saint Mary's without any notable prejudice to the said stock or out of some other profits to me belonging there (both which I should be very glad that my said commissioners could effect for me and I would willingly allow any reasonable rent to be paid out of my estate there to Mr. Copley for the said house for so long time but not to be charged to pay any thing here for it) then I desire my said commissioners in that case to take care that some other convenient place there be provided for Mr. Gilmett's and Mr. Territ's residence and diet there to their contentment till the time above mentioned with the best accommodation for them, and least charge to me that may be, and I would have them so contrive this business (if possibly they can) that Mr. Gilmett and Mr. Territt may by all means be continued in that province till that time, when I doubt not (by the grace of God) to be able to provide better for them than by reason of the extremity of the present troubles in England, I could do this year, which I hope they will consider and have a little patience till then; and this article I do again and again recommend to my said commissioners' care, to give satisfaction herein.

8. That the instructions be read to all the said commissioners in due time and place, to the end they may respectively take notice of them. Given under my hand at Bristol, 18th November, 1643.

C. BALTIMORE."

[Taken from "Council Proceedings from 1636 to 1657," p. 114-116.]

NOTE (LIV.) p. 285.

“ Commission for the government,” (of September 18th, 1644.)

“Cecilius, &c., lord and proprietor of the provinces and countries of Maryland and Avalon, in the parts of America, lord baron of Baltimore, &c., to all and singular persons to whom these presents shall come, greeting: Know ye that we, for divers special causes and considerations us thereunto moving, have revoked, and determined, and by these presents do declare, that we do hereby revoke and absolutely determine all former commissions heretofore granted unto our dear brother Leonard Calvert, esq., or to Giles Brent, esq., concerning the government of our said province of Maryland, and all power and authority by us thereby granted unto him or them, or to any other of our council, or to any person or persons whatsoever, in and by the said commissions, or any of them, and also all power heretofore given to our said brother, or the said Giles Brent, by the said commissions, or any of them, or otherwise of enacting or assenting unto any laws or ordinances in our name, within the said province; and we do hereby likewise discharge all and every person and persons whatsoever from our council, and to be of our council within the said province of Maryland, which heretofore have been of our council there, Nevertheless, considering and well knowing that the people there cannot subsist and continue in peace and safety without some good government to be ordained and established, as well for the cherishing of the virtuous and orderly, as for the punishment of the lewd and disorderly persons there, and calling to mind the faithful and laudable service done by our said dear brother Leonard Calvert, esq., as well in the adventure of his person in the first discent and settling of our colony, within our said province of Maryland, as in the good order and advancing of the same, by his personal residence within the same our said province, wherein he hath manifested to the satisfaction of ourself and of our colony there, such wisdom, fidelity, industry and other virtues, as render him capable and worthy of the trust hereby by us intended to be reposed in him, have nominated, constituted, ordained, authorised, established, and by these presents do nominate, constitute, ordain, authorise and establish, the said Leonard Calvert, in the absence of us and our heirs, our lieutenant general, admiral, marshall, chief captain and commander, as well by sea as by land, of our said province of Maryland, and the islands to the same belonging, and do by these presents grant unto him the chief commandment and absolute authority above and in all matters of warfare, by sea and land, to execute and administer the same to the resistance of the enemies or suppression of mutinies and insolencies, as our said lieutenant shall think most commodious, for the preservation of our said province, and to do all such other things as do belong or appertain to the office of a lieutenant general, admiral, marshall, chief captain or commander, in as large and ample manner, to all intents and purposes, as we ourself might do if we were personally present by force or virtue of the letters patent, to us granted by our sovereign lord, king Charles, under the great seal of England, bearing date at Westminster, 20th June, eighth year of his majesty's reign, to have, hold, execute, and administer the same with such and as ample power and authority as we, if we were personally present, might do or execute the same by force or virtue of the letters patent aforesaid, until we shall signify our pleasure to the contrary; and we do hereby further ordain and command all such as shall hereafter be sworn of our council within our said province of Maryland, all captains, officers and soldiers, as well by sea as by land, whom it doth or may concern, all our officers, receivers, bailiffs, marshalls, and all other persons whatsoever within our said province of Maryland, of what quality or condition soever that they and every of them acknowledge the said Leonard Calvert in the quality of our lieutenant general, admiral, chief captain, and commander over all our foresaid province of Maryland and islands, and members of the same,

Former commissions revoked.

Leonard Calvert to be lieutenant general.

This commission to be proclaimed within the province.

and do honour, respect and obey him as they ought to do, upon pain of such punishment to be inflicted upon them, and every of them, as such a high contempt as the disobedience and neglect thereof shall deserve, And to the end that no man shall pretend ignorance, we do command this our commission and ordinance to be proclaimed and published within our said province at the places accustomed to proclaim and publish any our edicts and ordinances, commanding him our said lieutenant to proceed with rigour against all contemners and neglectors of the same, in such strict and severe manner as we ourself might do by force and virtue of the said letters patent, if we were there personally present, and that without favour or connivance.

Leonard Calvert to be chancellor, chief justice, &c.

And we do further by these presents make, constitute, ordain and establish our said brother to be our chancellor, chief justice, and chief magistrate, within our said province, until we or our heirs shall signify the contrary under our hand and seal, and do hereby give him power from time to time to appoint and constitute officers and ministers for the administration and execution of justice, and for the doing and executing all other things whatsoever which belong to the establishing and government of a good and happy commonwealth within our said province.

Power to him to call and summon assemblies.

And we do further by these presents grant unto him our said lieutenant, chancellor, chief justice, and chief magistrate, full and absolute power and authority, when and as often as he shall think fit, to call and summon one or more general assembly or assemblies of the freemen of our said province, or their deputies, at such place or places within our said province as he shall think fit, for the enacting of wholesome laws and ordinances for the government and well ordering of the said province, and the people within the same, to which purpose we do hereby grant full power and authority unto our said lieutenant, from time to time, in every general assembly to be summoned by him within the said province of Maryland, in our name, stead and place, to enact and assent unto such laws and ordinances as he our said lieutenant shall think fit and necessary for the good government of the said province of Maryland, and which shall be consented unto and approved of by the freemen of the said province, or the major part of them, or their deputies, to be assembled by him our said lieutenant there, from time to time, for the enacting of laws within that province, Provided, that the said laws so to be enacted and assented unto by him our said lieutenant, there in our name, be as near as conveniently may be agreeable, and not contrary to the laws of England, and that every one of the said laws so to be enacted and assented unto in our name, be made to continue in force till we or our heirs shall signify our disassent thereto, under our or their hand and seal, and not to continue in force only for any other limited time, as till the next ensuing general assembly thereafter, the making thereof, or for any certain number of years, as divers laws heretofore have been made there, which causes a great deal of uncertainty, and produces many ill effects in the government there, Provided also, that our said lieutenant do not, in our name, enact or assent unto any law for the constitution, confirmation, alteration or change of any officer or officers within the said province, or which may any way infringe or prejudice any of our rights, prerogatives, or royal jurisdictions, over or in the said province, granted to us and our heirs by the letters patent above mentioned, every which law so to be assented unto and enacted by him our said lieutenant general there, in our name, and consented unto and approved of by the said freemen or their deputies, or the major part of them, in such manner as aforesaid, we do hereby declare, shall be in force within the said province until we or our heirs signify our or their disassent thereunto, under our or their hand and seal, and no longer, unless after the transmission thereof unto us or our heirs, and due consideration had thereupon, we or our heirs shall think fit to confirm the same, under our or their hand and

And to assent to laws.

Proviso--- that said laws be agreeable to the laws of England.

And to continue only until his lordship's disassent thereto, and not for any other limited time.

Proviso--- also, against any laws for the constitution or change of officers.

seal, And we do by these presents grant full power and authority unto our said lieutenant to adjourn, prorogue, and dissolve all and every such assembly and assemblies by him heretofore called, or hereafter to be called at his pleasure.

Power to the lieutenant general to adjourn, or dissolve assemblies.

And forasmuch as the calling of a general assembly of the said freemen, and the consulting about and enacting of laws, will require long time and much consultation, and many times sudden and other necessary occasions may happen or fall out, which require a speedy remedy; we do therefore hereby grant unto him our said lieutenant full power and authority, from time to time, to make, constitute, ordain and publish, in our name, such reasonable and profitable ordinances, edicts and proclamations, within our said province of Maryland, with reasonable pains and penalties therein to be expressed, to be duly inflicted on all offenders against the same, as he our said lieutenant in his discretion shall think fit, and as by the letters patent above mentioned is and are warranted, Provided that such penalties do not extend to the taking away the right or interest of any person or persons, of or in their life, members, freeholds, goods or chattels, nor be repugnant or contrary, but agreeable, as near as may be, to the laws established within the realm of England, and to the laws and ordinances established, or to be established within our said province of Maryland, all which edicts and proclamations shall stand in force only and until we or our heirs shall signify the contrary under our or their hand and seal, to him our said lieutenant and the people there, or that he our said lieutenant shall, in his discretion, think fit to repeal the same, or that the same be repealed in a general assembly of the said freemen or their deputies, to be called and assembled as aforesaid, with the consent of our said lieutenant.

Power to him to publish ordinances.

Proviso—that they do not affect the life or freehold of any person, or be not repugnant to the laws of England.

And further we do hereby grant full power and authority unto him, our said lieutenant, to appoint, from time to time, fit places for public ports for lading ships, unlading and discharging of all goods and merchandizes to be imported or exported into or out of our said province, and to appoint officers and ministers in the same places and ports, and also to erect and establish convenient places for the holding and keeping of fairs and markets, and to establish fairs and markets to be there held upon certain days for that purpose, to be by him appointed; and we do further by these presents grant full power and authority to him our said lieutenant, (if he see cause,) to pardon and remit in part, or in the whole, all pains, forfeitures or penalties, which any person or persons within our said province shall incur for any crime, misdemeanor or offence, against any the laws, ordinances or orders whatsoever, made or to be made for the good government of the province, and to grant pardons for all and every such delinquents, in our name, under our great seal of our said province, so as such pardon or pardons extend not to the pardoning of high treason, And further we do by these presents commit the custody and keeping of our great seal of our said province unto him our said lieutenant; and we do hereby further grant unto him our said lieutenant, power and authority for us, and in our name, to pass and grant under the same our great seal, all writs and processes, all commissions, as well for authorising such person and persons to be of our council there, as we shall from time to time appoint by warrant or direction under our hand and seal, as for the execution of justice, and for dividing and bounding of lands, all pardons, licenses, and other public acts and deeds whatsoever, which shall at any time pass within our said province.

Power to him to appoint public ports, fairs and markets.

Power to him to grant pardons and remit forfeitures.

Except for high treason. The lieutenant general to be keeper of the great seal.

And we do further hereby grant full power and authority unto him our said lieutenant for us and in our name to pass and grant under our great seal to such person or persons such proportions and quantities of land within our said province for such estate and interest and with such privileges and immunities as we have or from time to time shall give our said lieutenant warrant from under our hand and seal all which grants so to be made passed or granted after the same grants and the same warrants under our hand and seal for the passing thereof

Power to him to grant lands and the mode of granting regulated.

shall be enrolled by our secretary of the said province for the time being and after that our said secretary shall have certified under his hand upon the backside of every such grant—that the said grant and warrant under our hand and seal for the passing thereof are enrolled and that the grantee or grantees have performed the conditions of plantation (if the grant be passed by virtue thereof) concerning arms and ammunition or given caution for the performance thereof within one year next ensuing and also taken the oath of fidelity to the lord proprietor and also after that our surveyor general there for the time being or his deputy shall have likewise certified under his hand on the backside of every such grant that the land therein mentioned hath been truly surveyed and contains no more in quantity than it ought to do by warrant from us we do hereby declare shall be effectual in law and not before against us and shall bind us and our heirs as firmly as if Sisery and Seisin had been given and executed thereupon.

The lieutenant general to advise with the council.

And we do will and require our said lieutenant to advise as there shall be cause with those who shall be from time to time nominated of our council upon all occasions concerning the good government of our said province of Maryland and the people there.

Lieutenant general constituted sole judge in all causes criminal, except in capital cases, and in all causes civil, except in cases of freehold, and causes testimonial.

And we do further hereby grant full power and authority unto our said lieutenant to inquire hear determine and finally to judge of and upon all causes criminal whatsoever of what nature and quality degree or condition soever the same shall be which may happen or arise within our said province of Maryland according to the laws of the said province or in default thereof according to his best discretion as fully and absolutely as we ourself might do by force and virtue of the letters patent aforesaid if we were personally present to give sentence and judgment of in or upon the same (excepting only where the life or member of any person shall or may be inquired of or determined,) and to award execution upon every such sentence or judgment, And also to hear and determine all civil causes actions suits and demands both in law and equity of or concerning any goods chattels or contracts debts or demands or other personal or mixt actions suit or suits whatsoever (excepting where the freehold of any person or persons shall come in question and excepting causes testimonial) in the most summary and equal way that he may according to the laws and statutes of that our said province of Maryland already made and established or hereafter to be made and established and in default of such laws established or to be established within the said province of Maryland then according to his best discretion in as ample manner as we ourselves were we present could hear and determine the same by virtue of the said letters patent, And where the life member or freehold of any person or persons shall happen to come in question within our said province of Maryland we do hereby grant unto him our said lieutenant and unto such persons as we have or shall from time to time by commission under the great seal of our said province nominate and appoint to be of our council within the said province of Maryland or unto any three of them whereof our said lieutenant to be always one full power and authority to inquire hear and determine thereof according to the laws of the said province of Maryland established or to be established and in default of such laws there established or to be established according to their best discretion in as ample manner as we ourselves were we present could inquire hear and determine the same and to award execution accordingly.

Lieutenant general and two of the council judges in cases where life, member, or freehold are involved.

Power to the lieutenant general, in case of his death or absence, to appoint his successor.

And lastly, whereas our said lieutenant may happen to die or be absent from time to time out of the said province of Maryland before we can have notice to depute another in his place we do therefore hereby grant unto him our said lieutenant full power and authority from time to time in such cases to nominate elect and appoint such an able person inhabiting and residing within our said province

of Maryland as he in his discretion shall make choice of and think fit to be our lieutenant general chancellor keeper of our great seal there admiral chief justice magistrate and commander as well by sea as by land of the said province of Maryland and of the island to the same belonging during the absence of us and our heirs and of him our said lieutenant out of the said province and in as large and ample manner as we have by these presents authorized him our said lieutenant to govern for the present, And in case our said lieutenant shall happen to die or be absent out of our said province of Maryland and shall fail to make choice of nominate and appoint some person to be our lieutenant, &c., we do hereby grant unto our councillors there for the time being or the greater part of them full power and authority from time to time in every such case to nominate elect and appoint such an able person which shall then be of our council there and inhabiting and residing within our said province of Maryland as they or the greater part of them shall make choice of and think fit to be our lieutenant, &c., which person so to be chosen and appointed in any of the cases aforesaid we do hereby declare shall be our lieutenant, &c., during the absence of our brother, &c., or until we or our heirs shall signify our pleasure to the contrary and no longer to which lieutenant, &c., so to be elected nominated and appointed as aforesaid we do hereby grant the like power and authority in all causes and things as we have by these presents given and granted unto our said brother hereby commanding our councillors captains soldiers and officers for the time being and the people of the said province of Maryland and all others whom it may concern to be obedient unto him in all things matters and causes as we have in and by these presents commanded them to be obedient unto our said brother our present lieutenant upon pain of such punishment to be inflicted on them and every of them as such a high contempt shall deserve.—Given under our great seal of our said province of Maryland at our fort of St. Mary's within our said province on the eighteenth day of September 1644.

In case of his failure to do so, the council to appoint one of their own body thereto.

"Commission for the Council.

Cecilius, &c., to our dear brother Leonard Calvert, esqr., our lieutenant of our said province of Maryland and to our trusty and well beloved Giles Brent, John Lewger, Thos. Greene, Thomas Gerard, and James Neale, esqrs, greeting, know ye that we reposing special trust and confidence in your wisdoms, diligence, and experience have assigned and appointed you jointly and every of you severally to be of our privy council within our said province of Maryland, and we do hereby give unto you and every of you full power and authority from time to time and at all times untill we shall determine or otherwise revoke this present commission to assemble and meet together with our lieutenant or other chief governor of the said province for the time being when and where he shall from time to time direct and appoint to treat, consult, deliberate, and advise of all matters, causes, and things, which shall be discovered unto you or be brought afore you as well concerning the quiet government and regulating of the people there as for the good and safety of our said province of Maryland and for the better, &c., *ut supra anno 1642 P.* Given under the great seal, &c.

"Commission of Secretary.

Cecilius, &c., to all and singular persons to whom these presents shall come, greeting, Having had long experience of the abilities and industry of our trusty and well beloved councillor John Lewger, esqr., in performing unto us good and faithful service in the said province of Maryland and reposing special trust in his wisdom, diligence, and experience have constituted appointed and ordained and by these presents do constitute appoint and ordain him the said John Lewger to be our secretary of our said province of Maryland and also judge of all causes testamentary and matrimonial within our said province of Maryland, and

we do hereby give him power to grant letters of administration from time to time in our name of the estates of deceased persons within our said province of Maryland under our signet or lesser seal of our coat of arms now in the custody of our said secretary, and with the test of the said John Lewger, as occasion shall require, and we do by these presents appoint constitute and ordain the said John Lewger as well to be our attorney general as our principal officer and keeper of the acts and proceedings of us and of our lieutenant general and council there for the time being and of and for the entering and recording of all grants by us or our heirs to be made of any lands or offices within our said province of Maryland and for the entering and recording of all other matters acts and things which by my instructions laws or ordinances made or given or to be made or given for or concerning our said province of Maryland shall or ought by the appointment of us and our heirs or by the appointment of our lieutenant or other chief governor there for the time being or otherwise to be entered and recorded, to have and to hold execute and enjoy the said office and offices unto the said John Lewger during our pleasure and no longer. Given under our great seal, &c."

[N. B. The foregoing commissions to the governor, council, and secretary are copied from the book, entitled, "Council Proceedings from 1636 to 1657," p. 126, and 137. The two last are, as above, without any expressed date; but must be supposed to have been of the same as that of the principal of them, to the lieutenant general. The words—"ut supra anno 1642," refer to the former commission of that date, and purport that the remaining part of it was the same as that for the council of 1642, which seems to have been somewhat consonant to the common form of a commission to a justice of the peace.]

NOTE (LV.) p. 290.

"An act for the defence of the province."

"It shall be lawful for the governor for this year only to settle a garrison at Piscattoway, and to assess the charge of it upon every head able to bear arms inhabiting within the province, at any time afore the first of December next, so that such charge upon any head exceed not a barrel of corn, or fifty pound of tobacco with cask, at the choice of the party, and to press any soldiers to that service at the rate of three and twenty barrels of corn, or one thousand weight of tobacco with cask, and three barrels of corn, for a year's pay, and to appoint the payment of such soldier in such hundred and such place of the hundred, as the governor shall see fittest; and to appoint one or two places in every hundred to which all persons chargeable within the hundred shall bring the corn or tobacco charged upon them before the first day of December next; and if any one chargeable as aforesaid shall not pay the same according to such order as shall be appointed by the governor as aforesaid, such party so in default shall forfeit to the party to whose payment he was charged, double the quantity of the value of the tobacco or corn so charged, to be levied upon the party offending, by way of distress, and the charge of the late expedition to Kent, and of this assembly, as shall be allowed by the court, to be defrayed out of this levy. Published under the great seal, 13th February, 1644."

[Taken from the book in the council chamber, entitled "Assembly Proceedings from 1637 to 1658," p. 305.]

NOTE (LVI.) p. 303.

An ordinance of the lords and commons of England. (Jan. 23d, 1646.)

Whereas the several plantations of Virginia, Bermudas, Barbadoes, and other places of America, have been much beneficial to this kingdom, by the increase of navigation, and of the customs arising from the commodities of the growth of those plantations imported into this kingdom, &c., Be it ordained by the

lords and commons in parliament, That all merchandize, goods, and necessities, which shall be for the supportation, use, and expence for the several places in *Virginia, Bermudas, Barbadoes*, shall and may be exported from this kingdome, without paying any custome, subsidie, taxation, or other imposition, or duty for the same, the duty of excise excepted, during the space of three yeares next ensuing, except unto the plantation of Newfoundland, Provided, security be given to the officers of the customes, that the said merchandizes and goods so to be exported shall be really transported unto the said forrein plantations and no other places, there to be used for the onely use of the said plantations.

II. That it shall be lawful for any persons, subjects of this kingdome, to transport from hence unto the sayd plantations such persons as being fit to advance the trade shall be willing to be employed in the severall plantations: Provided the names of them be registered in the custome house book, and neither force used to take up such servants nor any apprentices entred to desert their masters, nor any children under age, admitted without the consent of their parents; and also that certificate be returned from the governor of such plantation within one yeare of the arrivall of the sayd persons there. And provided, that none of the sayd plantations do suffer or permit any ship, barke, or vessell to take in any goods of the growth of the sayd plantations from any of their ports, and carry them to any forrein parts, except in English bottoms; and if any of the sayd plantations shall offend therein, the sayd plantation shall be excluded from the benefit of this ordinance, and shall pay custome as other merchants do to France, Spaine, &c., or other forrein parts.

[The above copy of the ordinance is taken from Hazard's Collections, vol. i, p. 634; except, that the preamble prefixed to it is from *Holmes's Annals*, vol. i, p. 341, who cites it as from *Anderson's Commerce*, vol. ii, p. 404-5.]

NOTE (LVII.) p. 309.

Letters between Sir William Berkeley, Mr. Edward Hill, and governor Greene.

FROM SIR WILLIAM BERKELEY TO GOVERNOR CALVERT.

"Sir,—I received your letter concerning your mare, but could never learn who brought it, nor who was to receive and return my answer; but by this opportunity, have sent to Mr. Trussel speedily to deliver the mare and colt to you. Mr. Hill has often spoke to me to desire me to write to you, that you will give him satisfaction for some things which were left, and some things which are in your hands, and that he might have such conditions as you and he subscribed to. I told him he need not doubt, but you would give him all satisfaction, but he was so earnest with me to write, that I could deny him to speak to you to do him justice. The particulars of his demands I know not, but shall desire you to satisfy him in what is justly due to him. This is all at present. Your humble servant,

WILLIAM BERKELEY.

June 12th, 1647.

Endorsed—For the honble. Leonard Calvert, esqr. governor of Maryland.

From Mr. Edward Hill to governor Calvert.

"Honoured Sir,—My occasions to Appamatuck induced me once more to send over to desire those dues that are justly owing to me from you for my sallary in that unhappy service, viz: half the custom, half rents, and satisfaction for Colelough's horse. You know it is mine even by your promise, where you offered me the exchange of your filley at Chicocoan. I satisfied Sir William Berkeley in this cause and procured his letter, which, if it prevail not, hath left me to my remedy in the interim. I shall only desire a fair answer and that fame and suggested rumours altogether false shall not prejudice my right. I request your answer and rest yours, if you please,

EDWARD HILL.

Chicacone, this 18th June, 1647.

Postscript.—The remainder of the levy I hope you will see satisfied and my 146 arm's-length of Roanoak.

Endorsed—To the honourable Leonard Calvert, esqr.—These present.

Governor Greene's answer to captain Hill.

“Sir,—The noble gentleman, to whom yours were directed, is some days since laid in his grave, and hath appointed me here in his stead. For answer therefore to your demand concerning the customes, half rent, and satisfaction for Colelough's horse I not as yet understanding the business can make you no other answer than that whenever you please to send your attorney hither to plead your right you shall receive full satisfaction according to what justice will allot you. The rumours you mention we regard not, being fully determined (if any such things shall be true) to give the disturbers of his majesty's the king's peace their due punishment at any time when they shall invade us, and for your good therefore whatever we hear to the contrary we wish you shall be none of them. The remainder of your levy the law hath so fully provided for you that you need not doubt by our having it when tobacco comes payable. The 146 arm's-length of Roanoak you may please to add to the claim above mentioned wherein justice shall be duly administered unto you. Sir, I rest your friend,

This 19th June, 1647.

THOMAS GREENE.

Endorsed—To captain Edward Hill.—These present.

From captain Hill to Mr. Greene and captain Giles Brent.

“Honoured Sir,—I doubt not but you are familiar to such unhappy passages as were the first inducements to me for the entertainment of the government of Maryland, and although the specious pretence of that clause of absence in the governor's commission was the whole pretended title of a *reinuation*,* I am confident it would not be held sufficient to the usage of force, even by his lordship against his lordship's government then instated on me, for these ensuing reasons.

1st. The late governor being out of the province had not power to grant commission for to rule them.

2dly. His lordship's council had then the immediate power in the election and choice of a governor, which, as the state of things then stood, they supposed it absolutely necessary for the safety of the province to confirm me independent of any contradiction but his lordship and this assembly.

3dly. If the late invasion should be held lawful I doubt not but you are sensible to what a slavery the king's freeborn subjects and so consequently yourselves are involved in, when the single power of a governor should disannull his own and the country's act by a countermand, his own I say, tho acted by another person.

Gentlemen,—“I presume upon this to make this petition, that the government of the said province is as inherent to me till his lordship's pleasure be further known as his lordship's right in the said province or as you his council. What insufferable losses both of fortunes and credit I have sustained I doubt not but report hath brought it to you, but inducement of friends with the throngs of those that have been ruined by the unjust breach of the composition are daily clamorous in my ears, so that even justice if not credit or loss will force me I fear to some strange overture in that business. I am altogether unwilling to move the stone violently. What inundation, loss, and ruin it will produce to the whole I am not ignorant of. I had rather some moderate way were taken for the satisfaction on all sides—occasion (by the death of the late gent. (is now bald —————)† all discontents may be easily pacified and brought to good

*This word is so written in the record, but it seems to have been intended for the word—*re-invasion*; meaning the *invasion* of governor Calvert, after that of Ingle and Clayborne.

†The defect above is so in the record.

terms of qualification, Peace may breath a quiet possession unto them and every one there resident, but if the storm once break out, it is to be feared that proceeding from such an influence of discontent that it may overwhelm the whole.—Sirs, in this there is only difference in the persons of the governor, not his lordship's title infringed nor the peace, so that you may be confident it may be acted without evil or the punishment thereof which will happily fall on the opposers.—Howsoever, (since Sir William Berkeley's letters nor my own can procure a private right but by attorney) I have little hope to prevail in this business of such concernment, yet that I might give a fair demonstration to the world and his lordship of all proceedings, I have adventured to write thus much unto yee his council, and in all friendly love request your answer. I would to the uttermost of my power endeavour the safety of the province under his lordship; if it fail, for all that I know you may be blame-worthy; for, others of humour different from mine privately embrace a parliamentary influence, which may prove fatal to the whole. Gentlemen, I leave this to your consideration and rest your very loving friend,

EDWD. HILL.

Checakone, this 20th of June, 1647.

Postscript—Gentlemen, I have stopt my return to Virginia in expectation of your answer, which I hope will be speedy and in that very courtesy I shall rest thankfully yours,

EDWARD HILL.

Endorsed—To his hond. friends—Mr. Thomas Greene and captain Giles Brent—these present.

From Governor Greene to Captaln Edward Hill.

“Sir,—Whereas your vain claims of right to this government are grounded upon this false pretence, that the late governor being out of the province and not nominating one in his stead, the council residing in the province had full power and authority to elect and choose you, which is evident they had not, as the words of his lordship's commission plainly show, for the words of his lordship's commission in brief are these,—that in case our lieutenant shall happen to die or be absent out of the province, and shall fail to make choice of some person to be our lieutenant, &c., we do grant to our councillors full power in such case to elect such an able person, inhabiting and residing within our said province, which shall be one of our council there, which I presume you are none of,—if you are, we understand it not as yet. As for your menacing us with dangers and fears, we regard them not, desiring you in courtesy, if you please, to desist from such unlawful ways. The government is now lawfully instated upon me, one of his lordship's council, whose right and title I am resolved (God willing) to defend and maintain with all that is dear unto me my life; the rest of your kind threatning letter I pass it over as not regarding it, only this I say, that if his lordship shall appoint you to be his governor here, (to whom I hear you have written to that purpose,) after his lordship's signification therein, I shall readily resign unto you, but your boasting threats and other vain persuasions shall not easily allure me to it before his lordship's pleasure known therein. I rest your friend,

THOMAS GREENE.”

St. Inigoe's Fort, this 21st June, 1647.

Endorsed,—To Captain Edw'd. Hill—these present.

From Governor Greene to Sir William Berkeley.

“Honoured Sir,—Your letter dated the 12th of June last, and directed to Mr. Calvert, came into my hands, the said Mr. Calvert being dead some few days afore, who substituting me in his stead, I make this answer to your request in the said letter concerning captain Hill, who much without reason seems to suspect and doubt the justice of this court; and whereas, sir, in his behalf you desire he should be satisfied in what shall be justly due unto him, I am confi-

dent never was nor ever would have been denied him by the noble gentleman, deceased, without any such solicitation from you, nor shall captain Hill, I hope, ever have just cause of clamour for any thing unjustly detained from him here, so long as I shall have any interest in the government of this province, and these are humbly to intreat you to take some effectual course that captain Hill may not by his evil designs and practices, proceed to disturb his majesty's the king's peace here, of whose unjust and wicked designs of invading this province by the way of Chicacoan and Appametucks with some other forces to be drawn out of other parts of Virginia, we have daily credible information by others and of late expressions of his own sent unto us under his own hand from Chicacoan to that purpose, for as I would not willingly this colony should be further embued in the effusion of blood, if it may be avoided, so likewise I will not be understood so unresolved as not to be fully determined to give him his due and deserved punishment whenever we shall be invaded by him. The government of this province under his lordship being now lawfully instated upon me by the nomination of Mr. Calvert at his death, I am resolved by God's help to defend and maintain, though it be with the hazard and ruin of the whole, rather than to yield the least jott of his lordship's right and title here, so clearly due to him to the will and malice of such rebellious spirits, and shall not doubt but the advisers, abettors, and even the most private suggestors, as well as the open actors of such outrages, will in their due time be brought to light, shame and confusion. Thus, in a confident expectation of some speedy stay by your authority to these intended mischiefs of captain Hill's upon this colony, so much recommended to your protection and assistance by his majesty's letters,

I rest your humble servant,

THOMAS GREENE.

Endorsed—To the Right Hon'ble Sir William

Berkeley, Knt. Gov'r of Virginia—these present."

[N.B. No date appears in the record to this last letter. The preceding copies of these letters are taken from the book in the council chamber, entitled "Council Proceedings from 1636 to 1657," p. 154 to 161.]

NOTE (LVIII.) p. 326.

"The oath of Captain John Price taken in open Assembly, 29th February, 1647.

"This deponent saith, that he questioning Mr. Calvert, how the great charge incurred should be paid, the said Mr. Calvert replied, that the charge should be paid out of his own estate and his lordship's estate, and if that were not sufficient, he would engage the province even with the sale of his lordship's patent.

Walter Pakes deposeth in open assembly, that one Elias Beech declaring to Mr. Leonard Calvert in presence of this deponent, that he would depart the province for fear of great charges for payment of soldiers' wages like to light upon the country, to whom Mr. Calvert replied, that his own estate and his brother's should pay the soldiers, and that no other charge should come upon the country more than the 60 lb. of tob'o. a hh'd. and further added saying if that will not do I will engage his lordship's country for the satisfying of the said soldiers.

Lieutenant William Evans deposeth in open assembly, that he hath heard Mr. Leonard Calvert say words to this effect, whereas he found it necessary to maintain such a charge in defence of the province, if his lordship's estate in the province could not defray the charge, his own should, and if that would not he would engage his lordship's province.

William Whitle deposeth in open assembly, that he hath heard Mr. Calvert say, that his lordship's estate and his own estate should go towards the payment of the soldiers, and if that were not sufficient, he would engage the province; and in particular he the said Mr. Calvert agreed with the soldiers to take cowes

with calf or calves by their sides at the rate of 600 lb. of tob'o. and heifers in calf or calves by their sides at 500 lb. tob'o. towards their wages.

Mark Pheypo deposeth in open assembly, *idem ad verbum quod* William White *ut supra.*" [Taken from "Assembly Proceedings from 1637 to 1658," p. 321.]

NOTE (LIX.) p. 327.

Proclamation of Pardon.

"Whereas sundry the inhabitants of this province, by instigation of one Richard Ingle, have unfortunately run themselves into a rebellion against the lord proprietary of this province, and therein have committed divers insolencies and robberies against the laws of this province, but are now returned into obedience again and submitted themselves to his lordship's government, I do hereby in his lordship's name by virtue of his commission in that behalf publish and grant a general absolute and free pardon, unto every and singular the inhabitants residing within this province, of all crimes of rebellion, sedition and plunder, and of all other offences whatsoever, of what nature soever committed within this province, against the laws of the province, from the 14th of February, 1644, unto the sixteenth day of April last past, and of all losses of life, goods or lands, and of all other penalties incurred by the said offences or any of them, and I do further declare in his lordship's name, that every other person out of the province acknowledging sorrow for his fault, and requiring pardon before the feast of St. Michael the archangel next, shall have such pardon granted unto him under my hand and the seal of the province, excepting Richard Ingle, mariner.—Given at St. Mary's, 4th March, 1647. THOMAS GREENE."

[Taken from "Council Proceedings from 1636 to 1657," p. 166.]

NOTE (LX.) p. 327.

"PROCLAMATION

"By the Governor and Generall of Maryland.

"Whereas I am given to understand of the enemies being actually on foot, intending (if possibly they may) to invade us, and considering the danger of the present times, and how troublesome and inconvenient it may prove to divers inhabitants of this province, and prejudicial to the whole to hold a court in the beginning of June next, (especially all causes being to be tried by a jury, which will much weaken those parts from whence they come,) there being no business of that consequence or so urgent at this time in the province to be heard and determined, but may suffer delay; and being desirous to provide in the best manner I may for the good and safety of the province, these are to give notice to all the inhabitants of St. Mary's county, and to all others whom it may concern, that I have adjourned all causes to be tried this next court in the beginning of June, untill October next; reinforcing all writs, warrants or other process, returnable this next court as aforesaid, untill October; and all jurors and others warned upon summons bound to attend this court, are to take notice hereof, and give their attendance at the court to be held in the beginning of October as afore.—Given at St. Mary's this 22d May, 1648. THOMAS GREENE."

[From "Council Proceedings from 1636 to 1657," p. 166.]

NOTE (LXI.) p. 328.

"This day the freemen of the county of St. Mary's met together at the governor's to advise touching the levy of the charges incurred this present year and determined by the governor and council on the 9th of October last to be levied out of the county, the whole charge amounting to 7752 lb. tobacco and cash, the freemen alledge that the charge for imprisonment of the Indians is unduly laid upon

the county, but alledged not any thing material for it, Whereupon the governor found no reason to alter the former order set down by the governor and council as above; as concerning the manner of levying the said charge, the freemen unanimously agreed and concluded, that it should be levied upon all the tytheable persons inhabitants of St. Mary's county equally per head that were residing in the county from the tenth of June last which resulteth to 55 lb. tobacco.

June 14th, 1648."

[From the book entitled "Assembly Proceedings from 1637 to 1658," p. 338.]

NOTE (LXII.) p. 336.

"A commission from the lord proprietary constituting William Stone, esqr., his lieutenant, &c., of Maryland.

A revocation of all former commissions to any governor heretofore.

NOTE. The marginal abridgments here inserted are not in the record.

All former councillors discharged.

William Stone, esqr. appointed governor.

Cecilius absolute lord and proprietary of the province of Maryland and Avalon lord baron of Baltimore, &c., to all the inhabitants and people in Maryland and to all others to whom these presents shall come and any way concern, greeting. Know ye, that we for divers special causes and considerations us thereunto moving have revoked and determined and by these presents do declare that we do hereby revoke and absolutely determine all former commissions heretofore granted unto our dear brother Leonard Calvert, esqr., late governor of Maryland deceased or to any other person or persons whatsoever concerning the government of the said province of Maryland and all powers and authority by us thereby granted unto him or them or to any other of our council or to any other person or persons whatsoever in or by the said commissions or any of them and also all power heretofore given to our said brother or any other person or persons by the said commissions or any of them or otherwise of enacting or assenting unto any laws or ordinances in our name within our said province of Maryland, and we do likewise hereby discharge all and every person and persons whatsoever from our council and to be of our council within the said province of Maryland which heretofore have been of our council there, nevertheless considering and well knowing that the people there cannot subsist and continue in peace and safety without some good government to be ordained and established as well for the cherishing of the virtuous and orderly as for the punishment of the lewd and disorderly persons there, and whereas our trusty and well beloved William Stone now or late of Northampton county in Virginia esqr., hath undertaken in some short time to procure five hundred people of British or Irish descent to come from other places and plant and reside within our said province of Maryland for the advancement of our colony there and being confident of his wisdom, fidelity, industry, integrity, and other virtues which render him capable and worthy of the trust hereby by us intended to be reposed in him have nominated, constituted, ordained, authorized, and established, and by these presents do nominate, constitute, ordain, authorize, and establish the said William Stone our lieutenant, chief governor, general, admiral, marshall, chief captain and commander as well by sea as by land of our said province of Maryland and the islands to the same belonging, and by these presents do grant unto him the chief commandment and absolute authority under us above and in all matters of warfare by sea and land to execute and administer the same to the resistance of the enemies or suppression [of] mutinies and insolencies as our said lieutenant shall think most commodious for the preservation of our said province and our rights and dominion there and to do all such things as do belong or appertain to the office of a lieutenant general, chief governor, general, admiral, marshall, chief captain or commander under us of the said province of Maryland in as large and ample manner to all intents and purposes (except hereafter excepted) as we ourself might do if we were personally present to have, hold, execute and administer the same with such and as ample power and authority as if we were person-

ally present to have, hold, execute and administer the same with such and as ample power and authority as if we were personally present might do or execute the same (except hereafter excepted) until we or our heirs shall signify our or their pleasure to the contrary, and we do hereby further ordain and command all such as shall hereafter be sworn of our council within our said province of Maryland all commanders captains officers and soldiers as well by sea as by land whom it doth or may concern all our officers receivers bailiffs marshalls and all other persons whatsoever within our said province of Maryland of what quality and condition soever they be that they and every of them do acknowledge the said William Stone in the quality of our lieutenant chief governor general admiral chief captain and commander under us over all our said province of Maryland and the islands and members of the same and to honour and respect and obey him as they ought to do upon pain of such punishment to be inflicted upon them and every of them as such a high contempt of disobedience and neglect shall deserve, and to the end that no person within our said province of Maryland shall pretend ignorance hereof we do command that this our commission and ordinance be proclaimed and published within our said province at the places accustomed to proclaim and publish our edicts and ordinances commanding him our said lieutenant to proceed to punish all contemners and neglectors of the same in such strict and severe manner as we ourself might do if we were there personally present and that without favour or connivance, and we do further by these presents make constitute ordain and establish the said William Stone to be our chancellor chief justice and chief magistrate within our said province until we or our heirs shall signify our or their pleasure to the contrary, and we do hereby give him power from time to time to appoint and constitute officers and ministers excepting councillors and such other officers as shall be from time to time immediately appointed by commission or warrant from us under our hand and seal of arms for the administration and execution of justice and for doing and executing of all other things whatsoever which doth belong to the establishment and government of a good and happy commonwealth within our said province and the preservation of our rights and dominion there, and do further by these presents grant unto him our said lieutenant chancellor chief justice and chief magistrate full and absolute power and authority when and as often as he shall think fit to call and summon in our name from time to time one or more general assembly or assemblies of our freemen of our said province of Maryland or their deputy or deputies at such place or places within our said province as he shall think fit for the enacting of wholesome laws and ordinances for the government and well ordering of the said province and people within the same to which purpose I do hereby grant full power and authority unto our said lieut. from time to time in such general assemblies to be so summoned by him in the said province of Maryland in our name stead and place to enact and assent unto such laws and ordinances as he our said lieutenant shall think fit and necessary for the good government of our said province of Maryland and which shall be consented to and approved of by our freemen of our said province or the major part of them or their deputies to be assembled by him our said lieutenant there from time to time for the enacting of laws within that province as aforesaid, Provided that the said laws so to be enacted and assented to by him our said lieutenant there in our name be as near as conveniently may be agreeable and not repugnant or contrary to the laws of England and that every one of the said laws so to be enacted and assented unto in our name be to continue in force till we or our heirs shall signify our or their disassent thereunto under our or their hand and seal and no longer, Provided also that our said lieutenant do not in our name or otherwise enact or assent unto the repeal of any law or laws already enacted or which shall be from time to time hereafter enacted in our said

This commission to be proclaimed and published at the usual places within the province.

Governor Stone to be chancellor and chief justice within the province.

Power to the governor to appoint all officers except councillors, and such officers as shall be appointed immediately by his lordship.

Power to him to call assemblies.

Power to him to assent to laws.

Provided that such laws be agreeable and not repugnant to the laws of England. And to continue in force until his lordship's disassent thereto.

Provided also, that the governor do not assent unto the repeal of any law to which the lord proprietor assents. Nor assent to any law for constituting offices. Or which impose any fine, &c. to other use than to the lord proprietary. Or which concern religion, &c. without special warrant from the lord proprietary. Laws so enacted to be in force and valid unless his lordship signify his disassent thereto and no longer. Laws confirmed to be perpetual. Power to the governor to adjourn, prorogue, and dissolve assemblies at pleasure.

province of Maryland by us or in our name with the consent and approbation of our said freemen or the major part of them or their deputies nor unto any law or laws for the constitution confirmation alteration or change of any officer or officers within the said province, or which shall impose any fine forfeiture or confiscation to any other use or uses than to the use of us and our heirs lords and proprietaries of our said province of Maryland, to any law or laws which may any way concern matters of religion, constitution of parishes within our said province, payment of tithes, oaths to be imposed or taken by any of the people which are or shall be from time to time in our said province of Maryland, treasons, matter of judicature, or any matter or thing which may any way infringe or prejudice any of our rights, prerogatives, or royal jurisdictions and dominion over or in the said province of Maryland without further and special warrant from time to time under our hand and seal at arms first had and obtained and published to a general assembly of the freemen of our said province or their deputies and to be kept from time to time among the records of the said assembly there, every of which laws so to be assented unto and enacted by him our said lieutenant there in our name not any intrenching upon or infringing any of the provisos above mentioned and consented unto and approved by our said freemen or their deputies or the major part of them in such manner as aforesaid and not otherwise we do hereby declare shall be in force within our said province but if we or our heirs shall signify our or their disassent thereunto under our or their hand and seal at arms and no longer excepting such laws as we have or shall think fit to confirm by our special and immediate assent thereunto declared or to be declared under our hand and seal at arms which laws so already confirmed or which shall be so confirmed from time to time by our special assent as aforesaid and agreed unto from time to time by our said freemen or their deputies or the major part of them we declare shall be perpetual, And we do by these presents grant full power and authority unto our said lieutenant to adjourn prorogue or dissolve all and every such assembly or assemblies heretofore called or hereafter by him to be called at his pleasure, And forasmuch as the calling of a general assembly of our said freemen and the consulting about and enacting of laws will require long time and much consultation and many times sudden and other necessary occasions may happen or fall out which require a speedy remedy, We do therefore grant unto him our said lieutenant full power and authority from time to time to make, constitute, ordain, and publish in our name such reasonable and profitable ordinances, edicts, and proclamations within our said province of Maryland with reasonable pains and penalties therein to be expressed to be duly inflicted on all offenders against the same as he our said lieutenant in his discretion shall think fit provided that such penalties do not extend to the taking away of the right or interest of any person or persons of or in their life members freehold goods or chattels nor be repugnant or contrary but agreeable as near as may be to the laws established within the realm of England and to the laws and ordinances established or to be established within our said province of Maryland, all which edicts and proclamations shall stand in force only until we or our heirs shall signify the contrary under our or their hand and seal to our lieutenant for the time being and the people there or that our lieutenant there for the time being shall in his discretion think fit to repeal the same, and further we do hereby grant full power and authority unto him our said lieutenant to appoint from time [to time] fit places for public ports for lading ships unlading and discharging of all goods and merchandizes to be imported or exported into or out of our said province of Maryland and to appoint officers and ministers in the same places and ports and also to erect and establish convenient places for the holding and keeping of fairs and markets and to establish fairs and markets to be there held upon certain days for that purpose to be by him appointed

Power to the governor to make ordinances, &c.

Governor to appoint places for public ports, and officers for the same.

And to erect and establish fairs and markets.

and we do further by these presents grant full power and authority unto him our said lieutenant during the time of his being our lieutenant there to pardon and remit if he see cause in part or in the whole all pains forfeitures or penalties which any person or persons within our said province shall incur for any crime misdemeanor or offence against any the laws ordinances or orders whatsoever made or to be made for the good government of our said province and to grant pardons for all and every such delinquents in our name under our great seal of our said province so as such pardon or pardons extend not to the pardoning of William Clayborne heretofore of the isle of Kent in our said province of Maryland and now or late of Virginia or of his complices in their late rebellion against our rights and dominion in and over the said province nor of Richard Ingle nor John Durford mariner nor of any other person or persons whom we shall hereafter at any time think fit to except from pardon by any act under our hand and seal and signified to our lieutenant before we have granted any pardon to such person or persons under our great seal there, And we do by these presents commit the custody and keeping of our great seal of our said province of Maryland unto him our said lieutenant and we do hereby further grant unto him our said lieutenant power and authority for us and in our name to pass and grant under the same our great seal all writs and protests all commissions for the execution of justice and for dividing and bounding of lands all pardons licences and other public acts and deeds whatsoever which shall at any time pass within our said province, And we do further hereby grant full power and authority unto him our said lieutenant for us and in our name to pass and grant under our great seal to such person or persons such proportions and quantities of land within our said province for such estate and interest and with such privileges and immunities as we shall from time to time give him our said lieutenant warrant for under our hand and seal at arms and not otherwise, all which grants to be made passed or granted after the same grants and the said warrants under our own hand and seal at arms for the passing hereof shall be recorded or registered by our secretary of our said province for the time being and after that our said secretary shall have certified under his hand upon the back side of every such grant that the said grant and the said warrant under our hand and seal at arms for the passing thereof are recorded and registered and that the grantee or grantees have performed our last conditions of plantation dated the 20th day of June last past if the grant be past by virtue thereof concerning the transportation of so many persons into our said province as is required by the said conditions for such a grant and also have taken the oath of fidelity to us and our heirs lords and proprietaries of the said province of Maryland mentioned in the said last conditions of plantation and also that our surveyor general there for the time being or his sufficient deputy shall have likewise certified under his hand on the back side of every such grant that the said land therein mentioned hath been truly surveyed and contains no more in quantity than it ought to do by warrant from us, and after the grant shall be also testified by our said lieutenant subscribing his name thereto we do hereby declare shall be effectual in law and not before against us and our heirs and shall bind us and our heirs as firmly as if livery and seisin had been given and executed thereupon, and we do will and require our said lieutenant to advise as there shall be cause with those who shall from time to time by immediate commission or warrant from us under our hand and seal at arms be of our council there for the time being upon all occasions concerning the good government of our said province of Maryland and of the people there, And we do further hereby grant full power and authority unto our said lieutenant and unto our said council for the time being, who shall from time to time be then present in court or the major part of them whereof he our said lieutenant or his deputy being also of our said council to be always one and to have a casting vote

Power to the governor to grant pardons

Except to Clayborne, Ingle and Durford, or other persons specially excepted.

Governor to have the custody of the great seal and pass all public acts under the same.

Power to him to make grants of lands.

The governor to advise with the council.

The governor and council constituted judges of the provincial court.

to enquire hear and finally to judge of and upon all causes criminal and civil whatsoever of what nature kind quality degree and condition soever the same shall be which may happen within our said province of Maryland according to the laws from time to time in force of and in the said province and in default thereof according to his and their best discretion as fully and absolutely as we ourself might do if we were personally present to give sentence or judgment of or in or upon the same and to award execution upon every such sentence or judgment all and every powers and authorities above-mentioned we do hereby grant unto our said lieutenant William Stone and our said council till we or our heirs shall signify our or their pleasure to the contrary and no longer, And lastly, whereas our said lieutenant may happen to die or upon some urgent occasion to be absent from time to time out of our said province of Maryland before we can have notice to depute another in his place we do therefore grant unto him our said lieutenant full power and authority from time to time in such cases to nominate elect and appoint some one of our council there or in default thereof some able person inhabiting and residing within our said province of Maryland as he in his discretion shall make choice of and think fit to be our lieutenant general chancellor keeper of our great seal there admiral chief justice magistrate and commander as well by sea as by land of our said province of Maryland and of the islands to the same belonging during such absence of him our said lieutenant out of the said province or until we or our heirs signify our pleasure to the contrary in as large and as ample manner as we have by these presents authorised him our said lieutenant to govern for the present, and in case our said lieutenant shall happen to die or be absent out of said province of Maryland and shall fail to make choice of nominate and appoint some person to be our lieutenant general chancellor keeper of our great seal admiral chief captain magistrate and commander of our said province of Maryland as well by sea as by land, We do hereby grant unto our councillors there for the time being or the greater part of them full power and authority from time to time in every such case to nominate elect and appoint such an able person which shall then be of our council there and inhabiting and residing within our said province of Maryland as they or the greater part of them shall make choice of and think fit to be our lieutenant general chancellor admiral chief governor captain magistrate and commander as well by sea as by land of our said province of Maryland and of the islands to the same belonging which person so to be chosen and appointed in any of the cases aforesaid either by the nominating and election of him the said William Stone our present lieutenant or of our council as aforesaid we do hereby declare shall be our lieutenant generall chancellor keeper of our great seal admiral chief governor captain and commander of the said province of Maryland during such absence or in case of death of our said lieutenant Wm. Stone out of our said province or until we or our heirs shall signify our or their pleasure to the contrary and no longer to which lieutenant general chancellor keeper of our great seal admiral chief governor captain magistrate and commander so to be elected nominated and appointed as aforesaid we do hereby grant the like power and authority in all causes and things as we have by these presents above granted unto the said William Stone and no otherways untill we or our heirs shall signify our or their pleasure to the contrary and no longer hereby commanding our councillors commanders captains soldiers and officers for the time being and the people of the said province of Maryland and all others whom it may concern to be obedient unto him in all things matters and causes as we have in and by these presents commanded them to be obedient to the said William Stone our present lieutenant general chancellor keeper of the great seal admiral chief governor captain magistrate and commander upon pain of such punishment to be inflicted upon them and every of them as such a high contempt shall deserve, Provided

In case of the governor's death or absence out of the province he may appoint a deputy.

The governor failing to appoint, the council to elect one of themselves.

always that before the said William Stone or any other in the cases of his death or absence above-mentioned shall take upon them or any of them any of the said offices hereby granted to the said William Stone or execute any of them or any of the powers and authorities granted by these presents to the said William Stone they and every of them especially the said William Stone shall take the oath entitled The Oath of the Lieutenant General or Chief Governor of the Province of Maryland signed with our hand and hereunto annexed to be administered unto the said William Stone and every of them upon the holy Evangelists by our secretary of the said province for the time being in open court or in his absence by two of our council there for the time being whom we do hereby authorise to administer the same accordingly, And because some other able persons may go and reside within our said province of Maryland before we can have notice thereof who may be fit to be of our council for the better assistance of our said lieutenant in the government there and whose names we cannot therefore put for the present in our commission under our hand and seal at arms and sent herewith for the appointment of such to be of our council within the said province as are nominated in our said commission, therefore we do hereby grant power and authority to our said lieutenant William Stone within twelve months after the date hereof to nominate two or three such able and faithful persons over and above those who shall be nominated by our said commission to be of our council in our said province every of whom we do hereby appoint to be of our council there to all intents and purposes and to have the like powers and authorities as if they and every of them had been nominated in our said commission for our said council or by any other particular warrant under our hand and seal at arms for that purpose and so to continue till we or our heirs have notice thereof and shall think fit to discharge again them or any of them respectively by any warrant or writing under our or our said heirs' hand and seal at arms from being of our or their council there any longer any thing herein contained to the contrary notwithstanding, provided nevertheless that every one of the said persons so to be nominated by the said William Stone to be of our council there as aforesaid shall respectively take in open court within our said province the same oath of a councillor to us and in the same manner as we have appointed to be taken by the rest of our council in our said province before he shall be admitted to be of our council there which oath shall be administered unto every such person by our secretary there for the time being unto whom we do by these presents give power and authority to administer the same accordingly.—Given under hand and great seal at arms at Bath the sixth day of August in the seventeenth year of our dominion over our province of Maryland *Annog: Dom. 1648.*"

Provided that the said William Stone or other governor take the oath of the lieutenant general.

Power to the governor to appoint supernumerary councillors.

Provided, such supernumerary councillors take the oath of a councillor.

"The Oath of the Lieutenant or Chief Governor of the Province of Maryland.

I, A B do swear that I will be true and faithful to the right hon'ble Cecilius lord baron of Baltimore the true and absolute lord and proprietary of this province of Maryland and his heirs and him and them and his and their rights royal jurisdiction and seignory all and every of them into and over the said province and islands thereunto belonging will at all times defend and maintain to the utmost of my power and will never accept of nor execute any place office or employment within the said province any way concerning or relating to the government of the said province from any person or authority but by from or under a lawful authority derived or to be derived from time to time under the hand and seal at arms of his said lordship or his heirs and assigns lords and proprietaries of the said province, I will faithfully serve his said lordship as his lieutenant of the said province and in all other offices committed to my charge by his said lordship's commission or commissions to me, and will willingly yield up the said commission and commissions again, and all offices powers and authorities granted or to be granted by them or any of them into the hands of his said lordship and his heirs and assigns or to such person or persons as he or they shall appoint when-

soever he or they shall appoint me so to do and shall signify the same unto me in any writing under his or their hand and seal at arms and will not presume to put in execution or attempt to execute any office power or authority granted unto me by any of the said commission or commissions after that his said lordship or his heirs or assigns lords and proprietaries of the said province shall repeal them or any of them respectively by any writing under his or their respective hand and seal at arms and that the said repeal be published within this province, I will do equal right and justice to the poor and to the rich within the said province to my best skill judgment and power according to the laws and ordinances of the said province and in default thereof according to my conscience and best discretion and the power granted or to be granted to me by his said lordship's commission or commissions, I will not for fear favour or affection or any other cause let hinder or delay justice to any but shall truly execute the said office and offices respectively according to his said lordship's commissions to me in that behalf and to the true intent and meaning thereof and not otherwise to the best of my understanding and judgment, I will not know of any attempt against his said lordship's person or his right or dominion into or over the said province and the people therein but I will prevent resist and oppose it with the utmost of my power and make the same known with all convenient speed to his said lordship, and I will in all things from time to time as occasion shall require faithfully counsel and advise his said lordship according to my heart and conscience, and do further swear that I will not by myself nor any person directly or indirectly trouble molest or discountenance any person whatsoever in the said province professing to believe in Jesus Christ and in particular no Roman Catholic for or in respect of his or her religion nor in his or her free exercise thereof within the said province so as they be not unfaithful to his said lordship or molest or conspire against the civil government established here under him, nor will I make any difference of persons in conferring of offices rewards or favours proceeding from the authority which his said lordship hath conferred upon me as his lieutenant here for or in respect of their said religion respectively but merely as I shall find them faithful and well deserving of his said lordship and to the best of my understanding endowed with moral virtues and abilities fitting for such rewards offices or favours wherein my prime aim and end from time to time shall sincerely be the advancement of his said lordship's service here and the public unity and good of the province without partiality to any or any other sinister end whatsoever, and if any other officer or person whatsoever shall during the time of my being his said lordship's lieutenant here without my consent or privity molest or disturb any person within this province professing to believe in Jesus Christ merely for or in respect of his or her religion or the free exercise thereof upon notice or complaint thereof made unto me I will apply my power and authority to relieve and protect any person so molested or troubled whereby he may have right done him for any damage which he shall suffer in that kind and to the utmost of my power will cause all and every such person or persons as shall molest or trouble any other person or persons in that manner to be punished, I will faithfully serve his lordship as his chancellor and keeper of his great seal of this province committed to my charge and custody by his said lordship's commission to me to the best of my skill and understanding, I will cause the impression in wax of the said seal to be affixed to all such things as I have or shall from time to time receive commission or warrant for so doing from his said lordship under his hand and seal at arms and that it shall not be affixed to any other writing or thing whatsoever directly or indirectly with my privity consent or knowledge, I will do my best endeavour lawfully to preserve the said great seal in my custody so long as it shall please his said lordship to continue me in the charge and keeping thereof to the end that it may not be lost stolen or

unlawfully taken from me and whereby any other person may affix the impression thereof unto any writing or thing whatsoever without authority for so doing lawfully derived or to be derived from by or under his said lordship's hand and seal at arms, and that I will truly and faithfully deliver up again the said great seal into the hands of such person or persons as his said lordship or his heirs shall appoint when his or their pleasure for that purpose shall be signified unto me under his or their hand and seal at arms, So help me God and by the contents of this book."

[Taken from the book entitled "Council Proceedings from 1636 to 1657," p. 168 and 181.]

NOTE (LXIII.) p. 337.

"Commission of the Council of State in Maryland.

Cecilius absolute lord and proprietary of the provinces of Maryland and Avalon lord baron of Baltimore, &c., to our trusty and well beloved Thomas Greene esqr., captain John Price, Thomas Hatton our secretary, John Pile, and captain Robert Vaughan gent. greeting, Know ye, that we reposing special trust and confidence in your wisdoms, diligence, and experience, have assigned and appointed you jointly and every of you severally to be our privy council of state within our said province of Maryland, and we do hereby give unto you and every of you full power and authority from time to time and at all times until we or our heirs shall signify our or their pleasure to the contrary to assemble and meet together with our lieutenant or chief governor of our said province for the time being when and where he shall from time to time direct and appoint to treat consult deliberate and advise of all matters causes and things which shall be discovered unto you or be brought before you as well concerning the quiet government and regulating of the people there as for the good and safety of our said province of Maryland, and for the better and more peaceable government of our said province of Maryland we do hereby assign and appoint you and every of you until we or our heirs shall signify our or their pleasure to the contrary to be our justice and justices commissioner and commissioners for conservation of the peace within our said province of Maryland, and do hereby grant unto you and every of you in case any breach of peace shall happen within your any or either of your views or in case you shall be informed of any breach of the peace full power and authority to arrest or call before you by your warrant in our name to be directed to the sheriffs, constables, or other officers of counties, towns, villages, and other places within our said province of Maryland all and every the offender and offenders against our peace and if you see cause to bind over the offender or offenders with a good surety or sureties to appear before our lieutenant or chief governor and council there to answer the same and in the mean time to keep the peace or be of the good behaviour as the case shall require and in default of such surety or sureties to be by such offender or offenders tendered unto you to commit the offender or offenders to the common gaol or next prison within the said province as to you shall seem fit there to remain until they shall find good surety or sureties as aforesaid or until he or she or they shall be delivered by our lieutenant and chief governor and the council of our said province or the greater part of them whereof our lieutenant or chief governor for the time being to be one, and we do hereby further grant unto you and every of you full power and authority to attach arrest or by your warrants to cause to be arrested and attached in our name and to bring to due punishment any offender or offenders in weights or measures, all forestallers of markets, regrators, ingrossers, extortioners, rioters and other offenders against the publick welfare and peace of the province of Maryland, and we do hereby command all our sheriffs, officers, and ministers whatsoever that they and every of them be obedient unto our said councillors and commissioners and every of you in all

things as becometh, Provided always, that every one of you the said Thomas Greene, esqr., captain John Price, Thomas Hatton, John Pile, and Robert Vaughan nominated herein to be of our council of our said province do take the oath hereunto annexed entitled the oath of a councillor of state in Maryland before any of you respectively who shall not have taken the oath do presume to put in execution any of the powers and authorities hereby or by any other commission granted by us unto you as councillors or conservators of the peace in our said province or be admitted of our council there any thing herein or in any other commission of ours to the contrary notwithstanding which said oath shall be administered unto you and every of you respectively upon the holy evangelists by our lieutenant or chief governor of our said province for the time being whom we do hereby authorise and require to administer the same accordingly. Given under our hand and greater seal at arms the twelfth day of August in the 17th year of our dominion over our said province *annoq. domi.* 1648.

"The oath of a Councillor of State in Maryland.

I A. B. do swear that I will be true and faithful unto the right honble. Cecilius lord baron of Baltimore the true and absolute lord and proprietary of this province of Maryland and his heirs, and him or them and his and their rights, royal jurisdictions, and seignory all and every of them in to and over the said province and islands thereunto belonging will at all times defend and maintain to the utmost of my power and will never accept of nor execute any place office or employment within the said province any way concerning or relating to the government of our said province from any person or authority but by from or under a lawful authority derived or to be derived from time to time from his said lordship or his heirs lords and proprietaries of the said province under his or their hand and seal at arms, the peace and welfare of the people of this province I will ever procure as far as I can, I will aid and assist the administering and execution of justice in all things to my power, to none will I delay or deny right for fear favour or affection, I will to my best skill and according to my heart and conscience give good and faithful counsel to the said lord and proprietary and his heirs and to his and their lieutenant or chief governor of this province for the time being when thereunto I shall be called, I will keep secret all matters committed or revealed unto me or which shall be moved or debated secretly in council and faithfully declare my mind and opinion therein according to my heart and conscience and if any of the said treaties or councils shall touch any of the privy councillors of this province I will not reveal the same unto him so touched or concerned but will keep the same secret until such time as by consent of the lord proprietary or his lieutenant or chief governor here for the time being publication shall be made thereof, I will also as a councillor and as a justice and commissioner for conservation of the peace of this province do equal right unto the poor and to the rich to the best of my understanding and judgment according to the laws from time to time in force within this province and in default thereof according to my best discretion, and generally in all things will do as a faithful councillor to the said lord proprietor, and I do further swear that I will not by myself nor any other person directly or indirectly trouble, molest, or discountenance any person whatsoever in the said province professing to believe in Jesus Christ and in particular no Roman Catholick for or in respect of his or her religion nor in his or her free exercise thereof within the said province so as they be not unfaithful to his said lordship nor molest nor conspire against the civil government established here under him.—So help me God, and by the contents of this book."

[Taken from "Council Proceedings from 1636 to 1657," p. 199.]

NOTE (LXIV.) p. 338.

"Commission for Secretary in Maryland."

Cecilus absolute lord and proprietor, &c., Know ye that we reposing special trust and confidence in the wisdom diligence and fidelity of our trusty and well beloved Thomas Hatton gent. have constituted appointed and ordained and by these presents do constitute appoint and ordain him the said Thomas Hatton to be our secretary of our said province of Maryland, and we do by these presents appoint constitute and ordain the said Thomas Hatton as well to be our principal officer and keeper of the acts and proceedings of us and of our lieutenant general and council there for the time being and of and for the entering and recording of all grants by us or our heirs to be made of any lands or offices within our said province of Maryland, and for the probates, entring and recording of wills and inventories, and granting of letters of administration, and for the entring and recording of all other matters acts and things which by any instructions laws or ordinances made or given for or concerning our said province of Maryland shall or ought by the appointment of us or our heirs or by the appointment of our lieutenant general or other chief governor there for the time being or otherwise to be entred and recorded to have and to hold execute and enjoy the said office and offices unto the said Thomas Hatton until we or our heirs shall signify our or their pleasure to the contrary and no longer. Given at Bath under our hand and seal at arms the twelfth day of August in the seventeenth year of our dominion over the said province. *Annoq. domi. 1648.*"

[Taken from "Council Proceedings from 1636 to 1657," p. 206.]

NOTE (LXV.) p. 338.

"Commission for the Great Seal."

Cecilus absolute lord and proprietary of the provinces of Maryland and Avalon lord baron of Baltimore, &c. to our trusty and well beloved lieutenant and council of our said province of Maryland to all the inhabitants of the same and all others whom it may concern, greeting, Whereas our great seal of the said province of Maryland was treacherously and violently taken away from thence by Richard Ingle or his complices in or about February *anno domini* one thousand six hundred and forty-four and hath been ever since so disposed of as it cannot be recovered again for us we do therefore hereby protest against all and every act and things whatsoever which hath been sealed therewith since the fourteenth of February *anno domini* one thousand six hundred forty and four or which shall at any time hereafter be sealed therewith as unlawful and not done by any legal authority from us and we do hereby declare all and every the said acts and things unlawful and null, but because it is necessary for the better government of our said province and satisfaction of the people there to have a seal of ours constantly remaining in the said province and appropriated thereunto and known to be our great seal of the same whereby divers public acts and grants of lands within the said province may be ratified and confirmed according to such directions, instructions, commissions, or warrants as we have or shall from time to time give under our hand and seal at arms for that purpose therefore we have provided another new seal for our said province in the room and place of the other which was so taken away from thence as aforesaid which new seal we have committed to the custody of captain William Stone whom we have constituted as well our chancellor and keeper of the same as our lieutenant of the said province till we or our heirs shall signify our pleasure to the contrary the manner and form of the said new seal being this (vizt.) On the one side thereof is engraven our figure in complete armour on horseback with our sword drawn and our helmet on and a great plume of feathers affixed to it, the horse trappings furniture and caparison being adorned with the figure of our paternal

coat of arms and underneath the horse a sea-shore engraven with certain flowers and grass growing upon it and this inscription about that side of the seal (vizt.) *Cecilius Absolutus dominus Terra Mariæ et Avaloniæ Baro de Baltimore* and on the other or counter-side of the said seal is engraven a scutcheon wherein our paternal coat of arms to wit six peices impaled with a band dexter counterchanged quartered with another coat of arms belonging to our family vizt. a cross buttoned at each end (and also counterchanged) are engraven the whole scutcheon being supported with a fisherman on the one side and a plowman on the other standing upon a scrowl wherein is engraven the motto of our paternal coat of arms, vizt. *ffatti maschij parole Femini*, next above the scutcheon is engraven a count palatine's cap and over that a helmet with the crest of our paternal coat of arms on the top of it which crest is a ducal crown with two half bannerets set upright on it Behind the said scutcheon and supporters is engraven a large mantle and this inscription is about that side of the seal vizt. *Scuto bonæ Voluntatis tuæ coronastinos* the figure of the seal is round and it is of the same bigness that our former great seal was and cut in silver as the other was the impression of all which in wax is hereunto affixed it being somewhat different (though but little) from our said former great seal of the said province we do hereby declare the said new seal to be from henceforwards our great seal of the said province of Maryland and that we will have it so to be esteemed and reputed there till we or our heirs shall signify our or their pleasure to the contrary. Given at Bath under our hand and our said new great seal of the said province, the 12th day of August in the 17th year of our dominion over the said province of Maryland *Annoq. domi. 1648.*"

[From "Council Proceedings from 1636 to 1657," p. 201.]

NOTE (LXVI.) p. 339.

"Commission for Muster Master General.

Cecilius lord proprietor, &c., to our trusty and well beloved John Price, We considering that arms without the knowledge of the use of them are fruitless, and having an especial care of the safety and preservation of that our said province of Maryland have thought fit and necessary that the inhabitants thereof should be from time to time exercised and trained in the use of arms that so if occasion should require they may be the more ready and able to defend as well themselves as us and our rights there and offend their and our enemies, and we having had good experience of your knowledge and great abilities in martial affairs and of your great fidelity unto us in that occasion of the late insurrection and rebellion in our said province which was begun there by that notorious villain Richard Ingle and his complices against our dear brother Leonard Calvert esqr. deceased our late lieutenant of the same and therein against us and our undoubted rights and title there wherein and in divers other worthy actions you have manifested unto us and our colony there such singular fidelity courage wisdom industry and integrity as render you worthy and capable of the trust hereby intended by us to be reposed in you, wherefore We do by these presents constitute ordain and appoint you to be our muster master general of that our province of Maryland to have and to hold the said office of muster master general of our said province of Maryland with as ample fees vails regards profits commodities immunities and privileges as any muster master general of our said province hath or ought to have had in regard of his said office or as any muster master in Virginia of right now hath or enjoyeth or ought of right to have or enjoy by virtue of his said office till we or our heirs shall signify the contrary under our or their hand and seal at arms.—Given under our hand and greater seal at arms at Bath the 12th day of August in the 17th year of our dominion over the said province of Maryland *Annoq. domi. 1648.*"

[From "Council Proceedings from 1636 to 1657," p. 203.]

NOTE (LXVII.) p. 340.

"Commission for Commander of the Isle of Kent."

"Cecilius Lord Proprietor, &c. to our trusty and well-beloved Robert Vaughan gent. Whereas we have found you very faithful and well-deserving of us upon the occasion and insurrection and rebellion in our said province of Maryland begun and fomented by that notorious and ungrateful villain Richard Ingle and his complices against our dear brother Leonard Calvert esq'r. deceased our late governor of the said province and our undoubted right and title to the government of the same wherein you have manifested to the satisfaction of us and our colony there such fidelity courage wisdom industry and integrity as render you capable and worthy of the trust hereby by us intended to be reposed in you, wherefore we do by these presents authorise constitute and appoint you to be commander of the island of Kent within our said province and the inhabitants thereof and also grant unto you all such fees perquisites and profits as are belonging to the said place and office of commander of the said island to have and to hold the said place and office and fees perquisites and profits aforesaid till we or our heirs shall signify our or their pleasure to the contrary under our or their hand and seal at arms, and we do further grant hereby unto you full power and authority to elect and choose any six or more able and sufficient men inhabitants of the said island as you in your discretion shall think fit with whom you shall advise and consult in all matters of importance whom we do appoint shall be authorised commissioners for that purpose under the great seal of our said province and to call a court or courts as often as there shall be cause and in the said courts to award in our name all manner of process hold pleas and finally to hear and determine all causes and actions whatsoever civil happening and arising between any the inhabitants of the said island not exceeding in damage or demand the value of ten pounds sterling as also to hear and finally to determine all matters and offences whatsoever criminal happening and committed within the said island which may be heard and determined by any justice of the peace in England in their courts of session not extending to life or member, and we do further authorise you to do use and execute all and all manner of jurisdiction and authority whatsoever for the conservation of the peace within the said island as any justice of peace in England may or ought to do by virtue of his commission for the peace and further to elect and appoint all necessary officers for the execution of justice and conservation of the peace there with allowance of such fees as are usually belonging to the same or the like officers in Virginia and to do all other things and acts which shall be necessary for the execution of the power and jurisdiction hereby committed unto you.—Given under our hand and greater seal at arms at Bath the 12th day of August in the 17th year of our dominion over the said province of Maryland *Annoq. Dom. 1648.*"

[From "Council Proceedings from 1636 to 1657," p. 205.]

(NOTE (LXVIII.) p. 340.

"Commission to the Governor and Council in Maryland, [accompanied with certain Laws to be passed by the Assembly.]"

Cecilius absolute lord and proprietor of the provinces of Maryland and Avalon lord baron of Baltimore, &c. to our trusty and well beloved William Stone esqr. our lieutenant of our said province of Maryland and to all our councillors and to our freemen or their deputies in our general assembly within that province, greeting, Whereas we are informed that divers laws were enacted in our said province in our name by captain Edward Hill with the consent of our freemen or their deputies or the major part of them concerned in one or more general assemblies there in the time when he the said capt. Hill was our pretended lieu-

tenant or governor of the said province although the said captain Hill had never any lawful authority to act any thing there as our lieutenant or chief governor of that province nor for acting any thing else concerning that government in regard our dear brother Leonard Calvert esq. (lately deceased) by whom the said captain Hill pretended to be constituted our lieutenant there had no authority from us to appoint or constitute any in that place under us there but only in case of his death or of his absence from thence and during such absence only or until we or our heirs should signify our or their pleasure to the contrary and was also limited by our commission to him not to appoint or constitute any person in either of the aforesaid cases of death or absence to be our lieutenant or governor there unless such person were of our privy council there and residing within our said province at the time of such appointment or constitution which made the said captain Hill incapable of that place he being not then nor ever of our said council, and whereas we are informed that some of those laws so enacted as aforesaid are very prejudicial to our rights and royal jurisdictions in the said province and others of them inconvenient for our people there we do therefore for the reasons aforesaid hereby protest against all the said captain Edward Hill's proceedings in the quality of our lieutenant there as unlawful, and do hereby declare our dissent to all laws orders and ordinances whatsoever made or enacted by him or in our name as our lieutenant there in any general assembly or otherwise, and whereas we are informed that there have been at several times divers other laws enacted in our said province both before and after captain Hill's assumption and desertion of that pretended place of our lieutenant there by several others of our lawful lieutenants of the said province for the time being in our name to and with the consent and approbation of the freemen of our said province or their deputies or the major part of them which have been since found as we are informed too burthensome and inconvenient for the people there we therefore tendering their good more than our own have seriously considered of certain acts or laws hereunto annexed being sixteen in number and written in three sheets of parchment each sheet being signed by us and all three jointly together with these presents having the impression of our greater seal at arms affixed unto them which said acts or laws were proposed unto us for the good and quiet settlement of our colony and people in our said province and we finding them very fit to be enacted as laws there do hereby consent that our said lieutenant William Stone shall propose the said acts or laws hereunto annexed as aforesaid to a general assembly or assemblies of the freemen of our said province or their deputies and in case the said freemen or their deputies or the major part of them in any such general assembly within our said province shall within twelve months after the date hereof give their consent that all and every of the said acts or laws jointly contained in the said three sheets of parchment hereunto annexed shall be enacted for laws within our said province by us or our lieutenant there for the time being in our name in such manner and form as they are there written or drawn without any alteration addition or diminution to them or any of them, We do in that case and not otherwise hereby declare our assent also, that all and every of the said acts and laws may and shall be enacted, and we do in that case and not otherwise hereby enact them for laws within our said province and do also in that case and not otherwise declare our dissent to all and every law or laws which have been at any time heretofore enacted or shall be enacted for laws or ordinances in our name or otherwise within that our said [province] before the publishing of our commission there for the making and constituting of the said William Stone our lieutenant of our said province excepting nevertheless any act or acts law or laws whereby William Clayborne now or late of Virginia was or is by that or any other name attainted or condemned of any capital or other crime or crimes or misdemeanors all and every of which act or acts law or laws

concerning any such attainder or condemnation of the said William Claybourne we will have still to continue in full force and virtue any thing herein to the contrary in any wise notwithstanding.—Given under our hand and greater seal at arms at Bath the 12th day of August in the seventeenth year of our dominion over the said province *Anno Domini*. 1648.”

[From “Council Proceedings from 1636 to 1657,” p. 209.]

NOTE (LXIX.) p. 342.

“*A Commission annexed to the Conditions of Plantation, Anno 1648.*

“Cecilius, &c. to our trusty and well beloved William Stone esquire, our lieutenant of our province of Maryland, greeting, Whereas we have thought fit for divers reasons to revoke our former conditions of plantation for our said province of Maryland and to propose other conditions of plantation for the future within the said province which we send you herewith written in parchment under our hand and greater seal at arms bearing date the twentieth day of June last past and hereunto annexed, and whereas we have likewise herewith sent you certain draughts or forms of grants the one of a manor and the other of a freehold under our hand and greater seal at arms bearing date with these presents, and have hereunto also annexed, which forms we would have observed and no other, *mutatis mutandis et repletis replendis*, in the granting of lands within the said province for the future by virtue of the said last conditions of plantation bearing date as aforesaid or by virtue of any other warrant hereafter under our hand and seal at arms for granting of lands there excepting where we shall by any such warrant give directions to the contrary. We do therefore declare hereby that we have and do hereby revoke from henceforward all former conditions of plantation for our said province of Maryland heretofore proposed by us so as we will not have any land in our said province hereafter granted from us to any person whatsoever by virtue of any of the said former conditions of plantation for or in respect of the transportation of any person or persons whatsoever into our said province from and after the date hereof, and we do will and require you to publish this our declaration in our said province with all convenient speed to the end that all those whom it may concern may take notice thereof, and we do hereby authorise and require you till we or our heirs shall signify our or their pleasure to the contrary from time to time in our name and under our great seal of our said province to grant lands within our said province to all adventurers or planters to or within the same upon such terms and conditions as are expressed in the last conditions of plantation and according to the form of grants above mentioned and no otherwise without further and special warrant hereafter to be obtained for the same under our or our heirs hand and seal at arms: And whereas we are given to understand that as well divers Frenchmen as some people of other nations who by our former and also by these last conditions of plantation are not capable of having any lands within our said province are already seated or may hereafter with ours or you our lieutenant’s leave there for the time being seat themselves in our said province We do hereby therefore authorise you to make any person or persons of French, Dutch, or Italian descent as you shall think fit and who are already planted or shall hereafter come and plant in our said province capable of our said last conditions of plantation and do hereby give you power to grant lands thereupon within our said province unto them and every of them accordingly as well for and in respect of themselves as for and in respect of any person or persons either of British or Irish or of any other of the descents aforesaid which they or any of them and also which any other person of British or Irish descent shall hereafter with our or you our said lieutenant’s leave transport into our said province in the same and in as ample manner and upon the same terms and provisoes as you are

hereby or by our commission to you for the government of the said province authorised to grant any lands to any adventurer or planter of British or Irish descent within our said province, *Provided always* the demesnes of no manor within our said province which already is or shall be hereafter set out and appointed for our own particular use nor any part of our manor of West St. Mary's lying upon or near St. George's river in our said province nor any other land within our said province which hath been or shall hereafter be granted to any other person or persons from us and is or shall be confiscated or escheated again unto us or our heirs shall be alienated or granted from us or our heirs by virtue hereof without our further and special warrant for the same to be hereafter obtained under the hand and seal at arms of us or our heirs any thing herein to the contrary notwithstanding.—Given at Bath under our hand and greater seal at arms the twentieth day of August *Anno Domini* 1648.

Conditions propounded by the Right Hon'ble Cecilius Lord Baron of Baltimore Lord and Proprietary of the Province of Maryland, &c., to such persons as shall go to plant in the province aforesaid which conditions are to continue in force till other conditions of plantation for the said province shall be published under his lordship or his heirs hand and seal at arms within the said province.

What persons soever being of British or Irish descent (except hereafter excepted) shall at his own or friends charge cause to be transported into the province of Maryland from any other place himself or his deputy with any number of persons of the descent aforesaid and shall observe the conditions hereunder mentioned there shall be granted unto every such adventurer or planter for every twenty persons of the descent aforesaid which he shall so in any one year at his own or his friends charge cause to be transported from any other place thither a proportion of good land within the said province containing in quantity two thousand acres of English measure to be assigned and to lye all together in some one place within the said province every which said two thousand acres shall be erected into a manor and be conveyed by grant under the great seal of the said province to him his heirs and assigns respectively for ever with such royalties and priviledges as are most usually belonging unto manors in England to be held by some honour of his said lordship or his heirs within his said province in eveage tenure rendering and paying yearly for the first seven years after the said grant unto his said lordship and his heirs for every such manor at the two most usual feasts of the year (*viz.*) the Annunciation of the Blessed Virgin Mary and St. Michael the Archangell by even and equall portions of the rent of forty shillings sterling in silver or gold or the value thereof in such commodities as his said lordship and his heirs or his or their officer or officers appointed by him or them from time to time to collect and receive the same shall accept in discharge thereof and for the next fourteen years in lieu thereof forty bushell of wheat yearly as is now usually growing and used in England and according to English measure or six pounds sterling in silver or gold at the choice of his lordship and his heirs and after the said fourteen years in lieu thereof the twentieth part yearly of the annual yield and profits of such manor or in lieu thereof ten pounds sterling in silver or gold at the choice as aforesaid of his said lordship and his heirs for ever.

2. The sixth part of the land of every manor which shall be granted by virtue of the said conditions shall be for ever after accompted and known for the demesnes of every of the said manors respectively which demesnes shall be set forth in some one convenient place altogether within every such manor by distinct meetes and bounds for that purpose and shall never be alienated separated or leased from the royalties and lord or lords of the said respective manors from time to time for the time being for any number of years or other term exceeding seven years and the respective lords of every such manor and their heirs shall

have power from time to time and at all times hereafter to grant or convey any other part of the said mannor respectively (except the demesne land of the same) unto any other person or persons of British or Irish descent either in fee simple or fee-tayle for life lives or years to hold of him or them as of his or their said mannor respectively by and under such rents and services as he and they shall think fit not prejudicial to his lordship's royal jurisdiction there and so as all and every part of the said lands so to be granted or conveyed as aforesaid remain notwithstanding still subject and liable to the payment of such rents dues and services of every such mannor as are or shall be from time to time reserved upon the original grant thereof from his said lordship and payable to his said lordship and his heirs for ever.

3. What person soever of the descent aforesaid (except hereafter excepted) shall at his or his friend's charges cause to be transported any less or greater number of persons than twenty of the descent aforesaid into the said province from any other place and shall also observe the conditions hereunder mentioned he shall have granted unto him his heirs and assigns respectively under the great seal of the said province for and in respect of himself and every such person as aforesaid fifty acres of good land lying together in one place within the said province to be holden of some mannor there of his lordship's and his heirs in socage tenure rendering and paying yearly for every fifty acres to his said lordship and his heirs for the first seven years after the grant thereof the rent of one shilling sterling in silver yearly at the two most usual feasts of the year (viz) at the Annunciation of the Blessed Virgin and St. Michael the Archangel by even and equal portions or the value thereof in such commodities as his said lordship and his heirs or his and their officer or officers appointed by him or them from time to time to collect and receive the same shall accept in discharge thereof and for the next fourteen years in lieu thereof one bushel of such good wheat as is now usually growing and used in England or three shillings sterling in silver at the feast aforesaid by even and equal portions yearly at the choice from time to time of his said lordship and his heirs or his or their officer or officers who shall be authorised by him or them from time to time to collect or receive the same and after the said fourteen years in lieu thereof the twentieth part of the annual yield and profits of every the said fifty acres yearly or in lieu thereof twenty shillings sterling in silver or gold yearly at the feast aforesaid and at the choice aforesaid to his said lordship and his heirs for ever.

4. Every adventurer or planter his heirs and assigns shall cause so many persons of British or Irish descent from time to time to reside or inhabit upon the land granted to him or them in the said province as are required by the said conditions to be transported thither for the granting of the said land and in default thereof at any time upon a warning given unto him or them by such officers of his said lordship or his heirs as shall from time to time be appointed for that purpose for supply of the same such adventurer or planter and his heirs and assigns shall within one year after such warning given supply the number of persons that shall be so wanting to reside and inhabit upon the same or in default thereof to pay unto his said lordship and his heirs two bushels of good wheat yearly such as usually grows in England for default of every such person so wanting till such adventurer or planter and his heirs and assigns shall comply with this article of these conditions according to the true intent thereof and if the said default continue for three years together then for every man that shall be so wanting as aforesaid to inhabit and reside upon the said land it shall be lawful for his said lordship and his heirs to seize upon fifty acres of the said land whereupon there shall be at the time of such seizure no person of British or Irish descent then residing or inhabiting and let the same to any other person for any term not exceeding three lives or one and twenty years upon such terms and

conditions and under such rents and services as his said lordship and his heirs shall think fit paying such adventurer or planter and his heirs and assigns a tenth part of the rent that shall be paid by any such lessee for the same over and above the quit-rent to his said lordship and his heirs reserved upon the originall grant which shall be first deducted and payed.

5. Every man servant of British or Irish descent that shall be transported into the said province at the cost and charges of any other person or persons whatsoever of the same descent shall at the expiration of the time of their service so as it be not under three years after their arrival there be accompted a planter within the said province and shall have so much land granted unto him his heirs and assigns there from his said lordship and his heirs and upon such terms and conditions as if such servant had transported himself into the said province at his own proper cost and charges.

6. It is not intended that any such adventurer or planter shall have any land granted unto him or them for any person for or in respect of whom any land in the said province at the time of such grant hath been formerly granted by his said lordship.

7. Every adventurer or planter that shall have any land granted unto him by virtue of these conditions, before any grant be delivered to him and before it shall enure to his benefit shall take within the said province the oath of fidelity to his lordship and his heirs lord and proprietaries of the said province hereunto specified.

8thly. Every adventurer or planter that shall have any lands by virtue of these conditions shall pay such fees to his lordship's officers within the said province for their respective grants of the said land as are or have been usually paid to the like officers in Virginia for the like grants in that colony or as have been paid for the like in Maryland or as is or shall be appointed by act of a general assembly there, so as they be not less than the said fees usually paid in Virginia or which have been paid for the like in Maryland.

9. Every adventurer or planter shall have all such lands as shall become due unto him by virtue of the said conditions assigned unto him in such parts or places of the said province as his lordship or his heirs or his or their lieutenant or other chief governor there together with his lordship's secretary and surveyor general there for the time being shall from time to time appoint for the general good of his lordship's colony there and the reasonable convenience and commodity of every such adventurer or planter.

10. His lordship doth except out of these conditions of plantation all corporations societies fraternities guilds and bodys politick, as well spiritual as temporal, and every of them, and doth declare that he doth not intend that they or any of them shall be capable of or have any benefit by virtue of those conditions to inherit possess or enjoy any land within the said province, either in their own name or right or in the name or names or right of any other person or persons whatsoever to the use interest or benefit of any such corporation, guild, bodys politick, societies, fraternities, or any of them as aforesaid without further particular and special licence first had and obtained therefor under his lordship's hand and seal at arms.

11. In case his lordship shall think fit to except any other person or persons from having any land within the said province by virtue of these conditions, and shall cause notice to be given to such person or persons of such exception; such person and persons so to be excepted by his lordship shall not from and after six months next ensuing after such notice given as aforesaid have any future benefit to be capable of having any land within the said province by virtue of the said conditions for or in respect of any person or persons which shall be afterwards transported into the said province without further special licence under his lordship's hand and seal at arms for the same.

12. No adventurer or planter to or in the said province or any of them, who shall have any land due unto them him or her there by virtue of the said conditions nor their heirs or assigns shall give grant sell aliene or assign any of those lands tenements hereditaments within the said province which shall be assigned or granted unto him or them from his said lordship or his heirs, or which such adventurer or planter or any of them shall possess and enjoy by virtue of the said conditions to any corporation society fraternity guild or body politick, either spiritual or temporal, or to any other person or persons whatsoever in trust for them or any of them or to such use or uses or any use or uses comprized mentioned or forbidden in any of the statutes of Mortmayne heretofore made in the kingdom of England at any time before the reign of Henry VIII. who was king of that realm without particular or special licence first had and obtained for that purpose under the hand and seal at arms of his lordship or his heirs upon pain or forfeiture of all such lands unto his lordship and his heirs.

13. Every person whatsoever as shall claim any proportion of land in the said province of Maryland by virtue of the said conditions shall demand of his lordship or his heirs or of his or their lieutenant or chief governor of the said province for that time being a grant under the great seal of the said province of the said lands so due to him within one whole year next after the said lands shall be due unto him; and if any adventurer or planter shall neglect to make the said demand within the time above mentioned or that he or his heirs or assigns shall refuse at any time to accept of a grant from his lordship or his heirs under the great seal of the said province of such lands as shall from time to time be due unto any such adventurer or planter by virtue of the said conditions when it shall be offered unto him or them by his said lordship or his heirs or by his or their lieutenant or chief governor there or by his or their secretary within the said province for the time being, or shall not perform all things which are required by the said conditions to be performed by every such adventurer or planter, then every such adventurer shall for ever after loose their respective rights and pretences to the said land.

14. Because all secret trusts are usually intended to deceive either the government or state where they are made or some other persons and by experience are found to occasion many suits and dissensions, therefore no adventurer or planter shall take any grant from his lordship under the great seal of the province of any lands there by virtue of these conditions in trust for any other person or persons or to any other use or uses than what shall be expressed in the said several and respective grants upon pain of forfeiture of the said lands to his lordship or his heirs when any such secret trust or uses shall be truly discovered.

The oath of Fidelity to the Lord Proprietary, [referred to in the seventh clause of the preceding conditions.]

I A. B. do faithfully and truly acknowledge the right honble. Cecilius lord baron of Baltimore to be the true and absolute lord and proprietary of this province and country of Maryland and the islands thereunto belonging and I do swear that I will bear true faith unto his lordship and to his heirs as to the true and absolute lords and proprietaries of the said province and islands thereunto belonging and will not at any time by words or actions in publick or in private wittingly or willingly to the best of my understanding any way derogate from but will at all times as occasion shall require to the utmost of my power defend and maintain all such his said lordship's and his heir's right title interest privilege, royal jurisdiction, prerogative proprietary and dominion over and in the said province of Maryland and islands thereunto belonging and over the people who are and shall be therein for the time being as are granted or mentioned to be granted to his said lordship and his heirs by the king of England in his said lordship's patent of the said province under the great seal of England. I do

also swear that I will with all expedition discover to his said lordship or to his lieutenant or other chief governor of the said province for the time being, and also use my best endeavours to prevent any plot conspiracy or combination which I shall know or have cause to suspect is or shall be intended against the person of his said lordship or which shall tend any ways to the disinherison or deprivation of his said lordship's or his said heir's their right title royal jurisdiction and dominion aforesaid or any part thereof, and I do swear that I will not either by myself or by any other person or persons directly or indirectly take accept-receive purchase or possess any lands tenements or hereditaments within the said province of Maryland or the islands thereunto belonging from any Indian or Indians to any other use or uses but to the use of his said lordship and his heirs or knowingly from any other person or persons not deriving a legal title thereunto by from or under some grant from his said lordship or his said heirs legally passed or to be passed under his or their great seal of the said province for the time being. So help me God, and by the contents of this book.—Given at Bath under his lordship's hand and greater seal at arms the 20th day of June, 1648.

[The foregoing commission, conditions, and oath were taken from the book entitled "Council Proceedings from 1636 to 1657," p. 185, and p. 196.]

NOTE (LXX.) p. 344.

[PROCLAMATION.] "Novembr. 11th, 1648.

By the Governor of Maryland.

These are to give notice to all persons to whom it may concern that I do hereby (for special reasons me thereunto moving) suspend and revoke all power and authority of command upon the isle of Kent from capt. Robert Vaughan the commander of the said island and do acquit and discharge all the inhabitants of the said island from their obedience formerly due unto his command until they shall be thereunto required again by special commission from the governor of this province for the time being, and I do further hereby require and authorize Mr. Philip Conner one of the commissioners of the said county of Kent to issue forth all writs and processes necessary for the administration of justice in the said county, binding all parties interested over to the provincial court at St. Mary's there to have tried and determined their suits and causes until further order shall be taken therein, finding it necessary for the present to suspend all further power of judicature upon the said island.—Given at Saint Mary's this 11th Novembr., 1648.

THOS. GREENE.

[COMMISSION TO HENRY MORGAN.]

"By the Governor of Maryland.

Relying upon your faithfulness and courage I do hereby commit unto you and add unto your office of high sberiff of the county of Kent the command of all the militia of the said county, requiring you to take charge thereof and upon any invasion from abroad or mutiny insolence or other breach of peace at home or endangering the publick safety of your county to encounter and suppress the same in the best and speediest manner you may, and to raise and levy the force of the said county to that purpose, or any part thereof as there shall be cause, and I do hereby require all persons able to bear arms within the said county to be obedient unto you upon such pains and perils as the offence against military discipline shall deserve by the law of arms or censure of the provincial court. Given at Saint Mary's this 11th qber, 1648.

THOS. GREENE.

To Mr. Henry Morgan, high sheriff of Kent county.

[The following document appears as an entry in the proceedings of the provincial court.]

"Decembr. 9th, 1648. This day came capt. Robert Vaughan and humbly petitioneth the governor to withdraw his action against him and acknowledgeth

before the said governor and other parties present to have divers times reviled the said governor with scandalous and upbraiding speeches upon the isle of Kent where he bore the command, as also to have sundry times in his discourse upon the said isle taxed the said governor with partiality of justice, which said fact he confesseth to be foul and rashly done by him and altogether false, and withal humbly requireth forgiveness for such his said misdemeanor therein, expressing sorrow therefor with purpose of amendment, and desireth that he may not be brought to be censured as such his faults in this kind deserve.

Whereupon the governor withdrew his action and pardoned the offence."

[PROCLAMATION FOR REINSTATING CAPT. VAUGHAN.]

"By the Governor and General of Maryland.

Whereas a proclamation was sent up to the inhabitants of the isle of Kent bearing date at St. Mary's, 11th Novembr. to suspend and revoke all power and authority of command upon the said isle of Kent from captain Robert Vaughan commander of the said island, wherein also the inhabitants upon the said isle were acquitted and discharged from their obedience due unto him by virtue of his command until they should be thereunto again required by special commission from the governor of this province for the time being, which said proclamation, as I am given to understand, hath been published according to my order upon the said island, and now since finding it needful and convenient to continue the said suspension no longer upon the said island I do hereby give notice to all persons whom it may concern that I do again nominate and appoint him the said captain Robert Vaughan to be chief captain and commander of the said isle of Kent under me his lordship's governor and to exercise all power and authority upon the said island according to his former commission granted unto him from Leonard Calvert esqr., late governor bearing date at Kent 8th April, 1647, and do again hereby require the obedience of all people upon the said island to the command of him the said captain Robert Vaughan as fully and absolutely as if no such revocation or suspension had been made of his command before, And further for special reasons me thereunto moving I do hereby suspend all power and authority from all the assistants or commissioners joined with the said capt. Robert Vaughan in the aforesaid commission (Mr. Philip Conner only excepted) and in their rooms do constitute and appoint Mr. Nicholas Brown to be assistant or commissioner authorizing them the said capt. Robert Vaughan Mr. Philip Conner and Mr. Nicholas Brown to hear and determine all causes upon the said island according to the commission afore mentioned requiring all the inhabitants aforesaid to acknowledge and obey the said captain Robert Vaughan Mr. Philip Conner and Mr. Nicholas Brown in the several commands and authorities thereby committed to them as they will answer the contrary at their perills.—Given at St. Mary's this 11th Decembr. 1648.

THOS. GREENE."

[The preceding documents of this note are taken from "Council Proceedings from 1636 to 1657," p. 214 to 217.]

NOTE (LXXI.) p. 351.

"An act concerning Religion.

"Forasmuch as in a well governed and christian commonwealth matters concerning religion and the honour of God ought in the first place to be taken into serious consideration and indevoured to be settled, Bee it therefore ordayned and enacted by the right honourable Cecilius lord baron of Baltimore, absolute lord and proprietary of this province, with the advice and consent of the upper and lower house of this general assembly, that whatsoever person or persons within this province and the islands thereunto belonging, shall from henceforth blas-

pheame God, that is, curse him, or shall deny our Saviour Jesus Christ to be the Son of God, or shall deny the Holy Trinity, the Father, Son, and Holy Ghost, or the Godhead of any of the sayd Three Persons of the Trinity, or the Unity of the Godhead, or shall use or utter any reproachfull speeches, words, or language, concerning the Holy Trinity, or any of the sayd three persons thereof, shall be punished with death, and confiscation or forfeiture of all his or her land and goods to the lord proprietary and his heires.

And bee it also enacted by the authority and with the advice and assent aforesaid, That whatsoever person or persons shall from henceforth use or utter any reproachfull words or speeches concerning the blessed Virgin *Mary*, the mother of our Saviour, or the holy Apostles or Evangelists, or any of them, shall in such case for the first offence forfeit to the sayd lord proprietary and his heires lords and proprietaries of this province, the sum of 5*l.* sterling, or the value thereof, to bee levied on the goods and chattels of every such person so offending; but in case such offender or offenders shall not then have goods and chattels sufficient for the satisfying of such forfeiture, or that the same be not otherwise speedily satisfied, that then such offender or offenders shall be publicly whipt, and be imprisoned during the pleasure of the lord proprietary or the lieutenant or chiefe governour of this province for the time being; and that every such offender and offenders for every second offence shall forfeit 10*l.* sterling, or the value thereof to be levied as aforesayd, or in case such offender or offenders shall not then have goods and chattels within this province sufficient for that purpose, then to be publicly and severely whipt and imprisoned as before is expressed; and that every person or persons before mentioned offending herein the third time, shall for such third offence forfeit all his lands and goods and be for ever banisht and expelled out of this province.

And be it also further enacted by the same authority, advice and assent, that whatsoever person or persons shall from henceforth upon any occasion of offence or otherwise in a reproachful manner or way, declare, call, or denominate any person or persons whatsoever inhabiting, residing, trafficking, trading, or commercing, within this province or within any the ports, harbours, creeks, or havens to the same belonging, an Heretick, Schismatick, Idolator, Puritan, Presbyterean, Independent, Popish Priest, Jesuit, Jesuited Papist, Lutheran, Calvinist, Anabaptist, Brownist, Antinomian, Barrowist, Roundhead, Separatist, or other name or terme in a reproachful manner, relating to matter of religion, shall for every such offence forfeit and lose the sum of 10*s.* sterling or the value thereof to be levied on the goods and chattels of every such offender and offenders, the one halfe thereof to be forfeited and paid unto the person or persons of whom such reproachful words are or shall be spoken or uttered, and the other halfe thereof to the lord proprietary and his heirs lords and proprietaries of this province; but if such person or persons, who shall at any time utter or speak any such reproachful words or language, shall not have goods or chattels sufficient and overt within this province to be taken to satisfy the penalty aforesayd, or that the same bee not otherwise speedily satisfied, that then the person or persons so offending shall be publicly whipt and shall suffer imprisonment without bayle or mainprise until he, she, or they respectively shall satisfie the party offended or grieved by such reproachful language, by asking him or her respectively forgiveness publicly for such his offence before the magistrate or chiefe officer or officers of the towne or place where such offence shall be given.

And be it further likewise enacted by the authority and consent aforesayd, that every person and persons, within this province, that shall at any time hereafter prophane the Sabaath or Lord's day called Sunday, by frequent swearing, drunkenness, or by any unciville or disorderly recreation, or by working on that day, when absolute necessity doth not require, shall for every such first offence forfeit

2s. 6d. sterling or the value thereof; and for the second offence 5s. sterling or the value thereof; and for the third offence and for every time he shall offend in like manner afterwards 10s. sterling or the value thereof; and in case such offender or offenders shall not have sufficient goods or chattells within this province to satisfie any of the aforesayd penalties respectively hereby imposed for prophaning the sabaath or Lord's day called Sunday as aforesaid, then in every such case the party so offending shall for the first and second offence in that kind be imprisoned till hee or she shall publickly in open court before the chief commander, judge, or magistrate of that county, towne, or precinct wherein such offence shall be committed, acknowledge the scandall and offence hee hath in that respect given against God, and the good and civil government of this province; and for the third offence and for every time after shall also be publickly whipt.

And whereas the inforcing of the conscience in matters of religion hath frequently fallen out to bee of dangerous consequence in those commonwealths where it hath beene practised, and for the more quiet and peaceable government of this province, and the better to preserve mutuall love and unity amongst the inhabitants here, Bee it therefore also by the lord proprietary with the advice and assent of this assembly ordained and enacted, except as in this present act is before declared and set forth, that no person or persons whatsoever within this province or the islands, ports, harbours, creeks, or havens thereunto belonging, professing to believe in Jesus Christ, shall from henceforth be any waies troubled, molested, or discountenanced, for or in respect of his or her religion, nor in the free exercise thereof within this province or the islands thereunto belonging, nor any way compelled to the beleefe or exercise of any other religion against his or her consent, so as they be not unfaithfull to the lord proprietary, or molest or conspire against the civill government, estabblished or to be estabblished in this province under him and his heyres; and that all and every person or persons that shall presume contrary to this act and the true intent and meaning thereof, directly or indirectly, eyther in person or estate, wilfully to wrong, disturbe, or trouble, or molest any person or persons whatsoever within this province, professing to believe in Jesus Christ, for or in respect of his or her religion, or the free exercise thereof within this province, otherwise than is provided for in this act, that such person or persons so offending shall be compelled to pay treble damages to the party so wronged or molested, and for every such offence shall also forfeit 20s. sterling in money or the value thereof, half thereof for the use of the lord proprietary and his heires lords and proprietaries of this province, and the other halfe thereof for the use of the partie so wronged or molested as aforesayd; or if the party so offending as aforesaid, shall refuse or bee unable to recompence the party so wronged or to satisfie such fine or forfeiture, then such offender shall be severely punished by publick whipping and imprisonment during the pleasure of the lord proprietary or his lieutenant or chiefe governour of this province for the time being, without baile or mainprise.

And be it further also enacted by the authority and consent aforesayd, that the sheriffe or other officer or officers from time to time to be appointed and authorised for that purpose of the county, town, or precinct where every particular offence, in this present act contained, shall happen at any time to be committed and whereupon there is heereby a forfeiture, fine, or penalty imposed, shall from time to time distrain, and seise the goods and estate of every such person so offending as aforesayd against this present act or any part thereof and sell the same or any part thereof for the full satisfaction of such forfeiture, fine, or penalty as aforesayd, restoring to the party so offending the remainder or overplus of the sayd goods and estate after such satisfaction so made as aforesayd.

[The foregoing act is recorded in *Lib. C.* and *WH.* p. 106;—*Lib. WH.* p. 111,

and *Lib.* WH. and L. p. 1,—books in the office of the present Court of Appeals, and also in the book entitled “Assembly Proceedings from 1637 to 1658,” p. 354, in the council chamber.]

NOTE (LXXII.) p. 365.

“An order of assembly for the defence of the province as the present times will permit.

For the more safety and better securing of this province against the Indian enemy this present year, it is ordered, by the authority of this present general assembly, that through the whole province it shall be lawful for the freemen in every hundred to assemble themselves together at some place to be nominated within their hundred by the commander or other officer in each hundred as shall be nominated appointed and authorised by the governor for the time being with commission for that purpose on the three last days of the months of April, May, June, July, August, and September next following and then and there by the major voice of the freemen present to propose and conclude of such orders and ordinances as they shall judge meet and necessary for the defence of each particular hundred for the month next following and then and there by the so concluded on [orders] by the freemen then present and assembled as aforesaid the commander and other officer shall see them put in execution, provided that if any one suffer loss by houseing or other goods and chattels by means of any such order or obeying such order as shall be prescribed and concluded upon at such meeting that it shall be made good by levy to be made upon the hundred by the sheriff, which levy shall be assessed by three able persons to be chosen by the governor for the time being for that purpose out of some other hundred and not out of that hundred wherein such reparation is to be made, and because it is generally thought fit that the best and speediest way of preservation of the province may be by way of rounding, it is ordered, by the authority aforesaid, that five guns or more shall be taken from such rounders for a general and true alarm to all the inhabitants through the whole province, any three guns or more from any inhabitants shall be taken for a true alarm in like manner, and every master of a house and family neglecting with three guns to answer such alarm (after proof made that he heard the same) shall be fined to the lord proprietary 100 lb. tob'o. and cask for every such neglect, and any one causing or making a false alarm upon just proof made shall be fined to the lord proprietary for every such offence 100 lb. casked tobacco as aforesaid, and it is further ordered, that no inhabitant able to bear arms shall go out of the limits of the plantation where he is usually resident either to church or upon any other occasion whatsoever without his arms well fixed and a sufficient quantity of powder and shot about him, and every offender herein shall for every such offence be punished as the commander of the hundred where such offence shall happen to be committed shall in his discretion think fit for the nature of the offence considered not extending to life or member, and it is also further ordered, that every master of a family shall provide for himself sufficient arms and ammunition, and for every hired servant or other sojourner also residing and dwelling in his house this year, viz't. one fixed gun, 2 lb. of powder, and eight pound of shott pr. head, with gun and ammunition by virtue of this order every such master as aforesaid may bring the same to accompt and recover the same upon every such sojourner and if hired servant every such master may accompt or deduct the same out of the wages of every such hired servant if he be not already provided herewith as aforesaid, and every master of a family that shall be found defective herein shall be punished according to the discretion of the commander of that hundred where such master of a family dwelleth and as the nature of the offence shall require not extending to life or member.

The freemen have assented—THOS. HATTON.

Concurred by the governor—WILLM. STONE.”

[Taken from “Assembly Proceedings from 1637 to 1658,” p. 370.]

NOTE (LXXIII.) p. 367.

The Assembly's letter to Lord Baltimore.

"Saturday the 21st of April, 1649, being the last day and sessions-day of the assembly, a letter was read to be sent to his lordship, and signed by the whole house present.—The governor dissolved the house.

A letter sent to his lordship from the assembly held at Saint Mary's in April *Anno. dom.* 1649.

Right Hon'ble.—Great and many have been the miseries calamities and other sufferings which your poor distressed people inhabitants of this province have sustained and undergone here since the beginning of the heinous rebellion first put in practice by that pirate Ingle and afterwards almost for two years continued by his complices and confederates in which time most of your lordship's loyal friends here were spoiled of their whole estate and sent away as banished persons out of the province those few that remained were plundered and deprived in a manner of all livelyhood and subsistence only breathing under that intolerable yoke which they were forced to bear under those rebels which then assumed the govt. of your lordship's province unto themselves ever endeavouring by oaths and what other inventions and practices they might to withdraw the ears and affections of the inhabitants here from their wonted obedience to to your lordship and to assure themselves of the province so wrongfully taken and unjustly possessed by them which our sufferings we hope your honour apprehends and is sensible and which tho' they were ever violent even like a tempest for the time yet now (thanks be to God) all is past and calm and the whole province in perfect subjection again under your lawful government and authority during all which time your honour cannot be ignorant what pains and travell your friends underwent in aiding your dear brother for the subduing of those rebels and after again in conserving the province for your lordship never sparing labour cost or estate which they were or could be possessed of untill they had accomplished their intended purpose and desires in regaining it again and settled it under your lordship's protection and dominion, As for Mrs. Brent's undertaking and meddling with your lordship's estate here (whether she procured it with her own and others importunity or no) we do verily believe and in conscience report that it was better for the collony's safety at that time in her hands than in any man's else in the whole province after your brother's death for the soldiers would never have treated any other with that civility and respect and though they were even ready at several times to run into mutiny yet she still pacified them till at the last things were brought to that strait that she must be admitted and declared your lordship's attorney by an order of court (the copy whereof is herewith enclosed) or else all must go to ruin again and then the second mischief had been doubtless far greater than the former so that if there hath not been any sinister use made of your lordship's estate by her from what it was intended and engaged for by Mr. Calvert before his death as we verily believe she hath not then we conceive from that time she rather deserved favour and thanks from your honour for her so much concurring to the publick safety than to be justly liable to all those bitter invectives you have been pleased to express against her.

Hereupon we cannot choose but wonder why your lordship should write so tartly against the people who are all involved under the censure of your lordship's letter for protesting against all the laws which were pretended to be in force and enacted by Leonard Calvert, esqr., deceased our late governor at the last assembly held by him afore his death, as for the illegality of them we shall here briefly shew your lordship and hereby we hope shall sufficiently vindicate ourselves from such foul aspersions laid upon us from your lordship.

That the assembly then wherein these laws were pretended to be enacted as

afore was called first by captain Edward Hill who was not so accounted by us
 or esteemed by your lordship according to your instrument sent hither this year
 for the rightful governor of this province which assembly was continued only by
 Mr. Calvert never declaring any new summons at all to the inhabitants of the
 province for that purpose which ought to have been done in that case by him,
 but within a very short time after he had surprised all those who had combined
 themselves against him and cast them in prison proceeded to the enacting of
 laws with the members as afore called by captain Hill and under adjournment
 the whole house of commons (two or three only excepted) consisted of that re-
 belled party and his professed enemies to them he declared that they should be
 free during the assembly only the copy of which record is herewith enclosed,
 also we cannot choose but wonder how your lordship could suppose it fit and
 necessary that those your loyal friends and even those who concurred most to
 the necessary defence and preservation of the province should be deprived by
 law of [their] dues for so great and good a service done and effected by them
 and principally for your lordship's honour and glory notwithstanding all this it
 should be required at their hands to pay themselves a levy upon themselves.
 We much wonder also that your honour should consider or think much that a
 few cattle not above 11 or 12 cows at the most of your lordship's known clear
 stock and those conquered again to your lordship and taken from the unlawful
 possessor should be distributed among those men who had ventured and hazard-
 ed their fortunes lives and estates in the defence recovery and preservation of
 your lordship's province especially those very cattle being engaged with all
 other your lordship's estate here both by Mr. Calvert and Mr. Lewger to the
 soldiers here in consideration for their hire and wages, and lastly we wonder that
 such exactions should be made and required upon a people and those your faith-
 ful friends who had conquered the place many of them as yet being unsatisfied
 and groaning under their late hearty sufferings which have been great indeed
 when as we can make it clearly appear to your lordship that we have already
 satisfied and paid out of our own labour and effects towards the recovery reser-
 vation and sole defence of your lordship's province 60,000 lb. tobo. which is far
 more (my lord) than all our recovered estates in the province were then worth
 had they been sold at outcry, and further that such strait conditions of planta-
 tion should be proposed and demanded by your lordship as serve only to make
 the place desolate of spiritual comfort especially nevertheless such are the loyal
 affections and hearty well wishes of us your lordship's poor friends towards your
 honour that we really suppose and verily believe all former mistakes and less well
 understandings that have happened between your honour and us for these many
 years have proceeded only from mere mistakes and misinforments that your ho-
 nour is unfortunately subject to have of us at so vast a distance there is from
 your honour and being now cordially desirous justly and unanimously to express
 a willing forwardness to give your lordship all just and honourable satisfaction
 that can be expected from a people at present so illiterate and void of that un-
 derstanding and comprehension necessary for a mature and wise discussion of
 such a body of laws as is now proposed by your lordship to be assented unto by
 us for perpetual laws as we acknowledge ourselves to be, and whereas we have
 with much solicitude and earnest endeavour according to our weak understand-
 ing read over perused and debated upon all the aforesaid body of laws so pro-
 posed unto us by your honour in real desires indeed in compliance with your
 lordship of receiving them as laws but in conclusion finding them so long and
 tedious containing withal so many several branches and clauses that in prudence
 we cannot as yet with safety to ourselves and our posterity (being they are to be
 perpetual) concur to the enacting of them as laws requiring a far more serious
 and longer discussion of them than at this time we are able to allow thereunto

for the necessary employment we are forced upon in a crop at this time of the year most of us having no other means of subsistence than the same, Besides your honour's directions being such as that none of the said laws are to be recorded by us and enacted by the lieutenant general in your lordship's name without the whole body should be received by us without alteration addition or diminution to it on a serious perusal whereof we find in several parts of it such things as are not convenient or as we conceive it just to pass and so in that respect have thought it most prudential not to meddle at all with the foresaid body of laws but to reflect only on such things as may give your honour for the present most satisfaction and comply most (to the utmost of our weak capacity and present poor condition) with what we conceive your honour most to point and aim at which if we do not mistake are chiefly four, viz.—that the country may be preserved with peace and defended and governed with justice,—2dly. That some competent support may be raised to your lordship of the same and your lieutenant here.—3dly. That a stock of cattle may be raised again for your lordship, and lastly that all should be satisfied who had concurred to the regaining and conserving of the country, in compliance with all which we have first chosen and selected out of all your lordship's laws such as seemed to us most conducing to confirm a long desired and settled peace among us and have further added such others of our own as we conceive to be most necessary and best suitable to our present condition and towards a future support out of this colony to your lordship: we have with all loyal expressions of our hearty well wishes to your honour so far as the present weak and poor condition of this colony is capable of passed our consent to a law that your lordship and your heirs for seven years shall have a custom of 10 lb. of tobo. upon every hhd. of tobacco laden upon any Dutch vessel to be exported out of this province so that your lordship will graciously be pleased that the one half thereof may be yearly be employed towards the satisfying of all just claims touching the recovery and defence of your lordship's province as shall be brought in and made appear here in the secretary's office before the last of March next until they shall be fully discharged and by this your lordship's friends also in a short time we hope and verily believe will be complied with to a great deal of comfort and satisfaction on all parts, and lastly we have also enacted by a law that an assessment shall be laid upon all the inhabitants of this province to raise within these two years from the date hereof 16 cows and a bull which is by a third more than ever was known to be found certainly of your lordship's own proper stock in this colony since the recovery of the same though it is true more understand your lordship's (the right owners not being able to prove them theirs being unmarked in the time of the late rebellion and desirous to give unto your lordship all honourable satisfaction they could were contented all such uncertain beasts should be understood as your lordship's) were indeed and are disposed of towards the payment of such just engagements and at such rates as was agreed for by your brother afore his death and this we do willingly and freely in an earnest desire if it be possible to beget in your lordship better apprehensions and constructions of our bound affection and loyalty to your honour than hitherto we conceive through our hard fortune you have been pleased to understand of us, and with this humble request also that your lordship will be pleased to ratify and confirm under your hand and seal without further disturbance such disposition as is already made of your lordship's former stock and other personal estate here for the recovery and defence of your lordship's province according to the engagement and disposition thereof made by Mr. Calvert before his death as will appear by several oaths to that purpose taken herewith and verily that title of your lordship's known clear personal estate lost since the first rebellion was in truth so small as that it was not considerable when it was to come in balance with the safety of the province which as

the then present condition of things stood hung upon so ticklish a pin as that unless such a disposition had been made thereof an absolute ruin and subversion of the whole province inevitably would have followed which had it so happened we —————* your honour might have had far more just cause of indignation against your then governor for so small a trifle to have endangered the province than now in honour justice or conscience you may when thereby alone your lordship's province was then and is still reserved in true and due obedience to your honour especially (as we have often said) your lordship's whole estate here being disposed of bound and made over by your dear brother afore his death for the satisfaction of the aforesaid charges, the which being done and new and clear understanding procured between your honour and us your poor people here we do further humbly request your lordship that hereafter such things as your lordship may desire of us may be done with as little swearing as conveniently may be experience teaching us that a great occasion is given to much perjury when swearing becometh common forfeitures perhaps will be more efficacious to keep men honest than swearing Oaths little prevail upon men of little conscience, and lastly we do humbly request your lordship hereafter to send us no more such bodies of laws which serve to little other end than to fill our heads with suspicions jealousies and dislikes of that which verily we understand not, rather we shall desire your lordship to send some short heads of what is desired and then we do assure your lordship of a most forward willingness in us to give your governor all just satisfaction that can be thought reasonable by us, and whereas your lordship doth seem to be greatly distasted and disgusted at William Tomson your lordship's old servant through some information which have been given your lordship of his comportment here in aiding and siding with the rebels against your lordship's governor and government which information we do assure your lordship to be most false proceeding rather (as we may suppose) out of hatred and spleen towards him than any good affection or love to your lordship for before any thing was proceeded upon in the assembly William Tomson was called and strictly examined before the governor and council and the whole assembly and nothing at all could be proved against him wherewith he was accused to your lordship that verily him in that point most innocent* and further report of him that your honour hath not a more faithful and cordial friend in the whole province and shewed to the utmost of his ability even before in time of and ever since the troubles here than William Thompson is, Therefore we humbly crave of your honour according to your honour's wonted clemency and favour towards him not to harbour such thoughts and give ear to such false suggestions and acclamations against him and further my lord seeing it hath been so notorious an injury and infamy to him we humbly crave that your lordship will intimate hither the next year who were his principal accusers in this point which we the more earnestly beg for that it will give the whole country and himself great satisfaction, Thus in all humbleness to your lordship we have expressed our intentions and good will so far as the tenderness of the province and our abilities can yet well bear hoping to regain your lordship's favour if through misinformation you have conceived otherwise of us not doubting but upon —we shall be better able to contribute more largely towards your support and comply with your desires withal beseeching your lordship to ratify what we have so earnestly aforementioned and craved at your lordship's hands and then we are confident all things will go on with love peace and unity resting.

Your lordship's humble and faithful servants.

From the house of assembly at Saint }
 Maries, 21st April, 1649. }

Signed by all the council and
 burgesses that day present."

* So in the record.

"His Lordship's Declaration—Anno. 1649.

Cecilius, &c., to our trusty and well beloved William Stone, esqr., our lieutenant of our said province of Maryland to those of our council here and to the general assembly of freemen of our said province and to all others whom it may concern, greeting, &c., Whereas we sent a body of laws hither the last year by our secretary Thomas Hatton under our hand and greater seal at arms containing 16 in number to be proposed by you our said lieutenant to the assembly there for their consent thereunto together with a commission thereunto annexed signed also by us and affixed to the same seal and bearing date the 12th of August 1648 Whereby among other things was declared our assent to the said laws upon such conditions as were expressed in the said commission which laws were and are so just and reasonable as that upon due consideration they ought to be well liked of by all well affected men according as you and our lieutenant after your receipt of them upon good reason affirmed to us by your letter dated the 20th of February last, nevertheless it seems through some misunderstanding there the general assembly at a session thereof holden at Saint Mary's in April last were unwilling at that time to consent to the enacting of them all as laws there which unwillingness in most of the said assembly was occasioned chiefly as we are informed and have so much cause to believe by the subtle suggestions of some who ought rather to have assisted in promoting all fitting inventions of preserving a good correspondence rather than to raise or cherish any jealousies or discontents between us and the people there but in regard the chiefest pretended exceptions against those laws were as we are informed contained in the act of recognition of our charter of our said province from the late king of England and in that other for the oath of fidelity to us wherein it seems the words (absolute lord and proprietary) which title is the same that is given us by the same charter and the words (royal jurisdiction) are stumbled at by some there who seem to doubt that the former words should infer a slavery in the people there to us and the latter words exceed the power intended to us by the said charter we thought fit hereby to declare that as the former words import no such odious and sinister interpretation so we call God to witness we neither had nor have any intention to enslave the people there by them or any other way whatsoever but indeed the laws themselves do sufficiently clear our intentions herein to all well meaning men if they be well considered for the act of recognition and also the oath of fidelity have both relation to our said charter which provides that all laws shall be made by us and our heirs there with the consent of the freemen of our said province or their deputies or the major part of them and by several other acts contained in the said body of laws there is provision made for freedom of conscience, for freedom of taxes (but such as shall be laid with the assembly's consent) for freedom from martial law but only in time of camp or garrison and within such camp or garrison from freedom of being compelled in any kind to contribute to any war out of our said province without the consent of the assembly, for freedom of trade with the Indians upon reasonable conditions tending more to the public good and tranquillity than to our own advantage, how therefore under such essential provisions for the safety and freedom any reasonable people upon mature consideration have any just occasion of jealousy of being enslaved we nor certainly any well disposed person can imagine as to those other words of royal jurisdiction we do hereby declare that it is intended by our said charter that we should have all such jurisdiction there as the bishops of Durham at any time heretofore ever had exercised or enjoyed or might have had exercised or enjoyed in temporalls within the bishoprick or countypalatine of Durham in the kingdom of England and we are well satisfied by learned council here and such as are best read in antiquities that the bishops of Durham before Henry the 7th*

* An error, for "Henry the 8th."

his time (heretofore king of England) had and did exercise all royal jurisdiction within the said bishoprick or county palatine though this latter years their jurisdiction was much diminished by an act of parliament made in the time of the said king Henry and this we thought fit to signify."

[The preceding "letter of the assembly" and "his lordship's declaration," were both taken from the book in the council chamber entitled, "Assembly Proceedings from 1637 to 1658," p. 339 and 351.]

NOTE (LXXIV.) p. 380.

"By the Governor of Maryland.—Proclamation.

"Published *Eod.*—Whereas Charles of blessed memory king of England Scotland France and Ireland, defender of the faith, &c., is lately deceased, These are to give notice to all persons whom it may concern, and in especial to all and singular the inhabitants of this province of Maryland, that his eldest son Charles the most renowned prince of Wales the undoubted rightful heir to all his father's dominions is hereby proclaimed king Charles the second of England Scotland France and Ireland defender of the faith, &c.—Long live king Charles the second.—Given at Saint Mary's the 15th of November, 1649.

THOMAS GREENE."

"By the Governor, &c., of Maryland.—Proclamation.

Published *Eod.*—Whereas the king's most excellent majesty Charles the second by the grace of God king of England Scotland France and Ireland defender of the faith, &c., was by order of the governor and council publicly this day proclaimed king. In commemoration thereof and to further the common rejoicing of the inhabitants upon that occasion and that none of them may be debarred therefrom, I do therefore in the lord proprietary's name hereby declare and pronounce a general pardon to all and every the inhabitants of this province for all and every offence and offences by them or any of them committed since the last general pardon published within this province and for all fine forfeiture or penalty for or by reason thereof due.—Given at St. Mary's this 15th day of Novembr, 1649.

THOMAS GREENE."

[Taken from "Council Proceedings from 1636 to 1657," p. 321.]

NOTE (LXXV.) p. 391.

"An act prohibiting all compliance with capt. WILLIAM CLAYBORNE, in opposition of his lordship's right and dominion over this province.

Whereas capt. William Claybourne, heretofore of the isle of Kent within this province of Maryland and now of the colony of Virginia, for his frequent attempts practices and enterprizes in opposition of his lordship's undoubted right and dominion in and over this province, hath heretofore carried himself in a very rebellious manner against his lordship and the government established here under him, and still remains exempt from pardon in that respect, And whereas also upon a full hearing on both sides, by reference from his late majesty, before the lords of the council in England the fourth of April one thousand six hundred thirty-eight the said Claybourne's pretended claim to the said isle of Kent and some other part of his lordship's province and trade with the Indians was rejected, and his lordship's undoubted right and title thereunto, according to his patent, was confirmed, And whereas likewise by proclamation made and published in Virginia the fourth of October one thousand six hundred thirty-eight by the authority of the then governor there with the advice and consent of the council of state in relation to and in pursuance of the said order of the lords of the council, every the inhabitants of that colony were expressly prohibited to use or exercise any trade or commerce with any Indians within the bounds of

this his lordship's province without special license from his lordship for that purpose upon the penalty and forfeiture therein expressed, as by the said order of the lords of the council and proclamation both remaining upon record with the secretary of this province more at large it doth and may appear, And whereas further the said capt. Claybourne hath of late by his letters to the present governor of this province presumed in an upbraiding insolent threatening manner to renew his former pretended claims here in opposition of his lordship's right and dominion, and (as is credibly reported) gives out in speeches that he purposeth e'er long to make some attempt upon the isle of Kent against the peace and safety of this province, For preventing whereof therefore and the better to restrain and keep all and every the inhabitants of this province in their due obedience to his lordship and the government established here under him, Be it enacted by the lord proprietary with the advice and consent of the upper and lower houses of this assembly, that what person or persons soever now inhabiting or which shall from time to time hereafter inhabit or be resident upon the said isle of Kent or any other place within this province that shall hereafter presume, contrary to his or their fidelity or obedience to his said lordship and his heirs lords and proprietaries of this province and the government here established under him, in any sort to assist abet or countenance the said Claybourne or any of his complices or adherents in any attempt practice or enterprize whatsoever upon or against the said island of Kent or any other place within this province or any thing thereunto belonging in opposition to his lordship's and his heirs lords and proprietaries of this province his and their undoubted right and dominion in and over the same upon proof thereof by two sufficient witnesses shall be punished by death and confiscation of all his and their lands goods debts and chattels within this province to the use of his lordship and his heirs lords and proprietaries of the same."

[Taken from the book, in the council chamber, entitled, "Assembly Proceedings from 1637 to 1658," p. 376.—It is also recorded in three different record books in the office of the present court of appeals, as referred to by Mr. Bacon.]

NOTE (LXXVI.) p. 404.

The oath of Fidelity prescribed by the act of 1650, ch. 29.

I A. B. do swear that I will be true and faithful (so long as I shall be a member of this province) to the right honourable Cecilius lord baron of Baltimore lord and proprietary of this province of Maryland and the islands thereunto belonging and to his heirs lords and proprietaries of the same and to his lieutenant or chief governor here for the time being, and will not at any time by words or actions in publick or in private wittingly or willingly, to the best of my understanding, any way derogate from but will at all times as occasion shall require to the utmost of my power defend and maintain all such his said lordship's and his heir's just and lawful right, title, interest, privileges, jurisdictions, prerogatives, propriety, and dominion over and in the said province and islands thereunto belonging and over the people who are and shall be therein for the time being, as are granted to his said lordship and his heirs by the late king of England in his said lordship's patent of the said province under the great seal of England not any wayes understood to infringe or prejudice libertie of conscience in point of religion; And I do also swear that I will with all expedition discover to his said lordship or to his lieutenant or other chief governor of the said province for the time being, and also use my best endeavours to prevent, any plot, conspiracy, or combination which I shall know or have just cause to suspect is or shall be intended against the person of his said lordship or which shall tend any ways to the disinherison or deprivation of his said lordship's or his heirs their right, title, jurisdiction and dominion aforesaid or any part thereof, And I do swear that I

will not either by myself or by any other person or persons directly or indirectly take, accept, receive, purchase, or possess any lands tenements or hereditaments within the said province of Maryland or the islands thereunto belonging from any Indian or Indians to any other use or uses but to the use of his said lordship and his heirs lords and proprietaries of this province or knowingly from any other person or persons not deriving a legal title thereunto by from or under some grant from his said lordship or his heirs lords and proprietaries of this province legally passed or to be passed under his or their great seal of the said province for the time being. So help me God."

NOTE (LXXVII.) p. 405.

In compiling the text of our history, in that part which contains a statement of the acts of assembly, passed at the session of April, 1650, an important document was inadvertently omitted; which, as it appears to have been a publick and political transaction during the same session of assembly, and as it tends strongly to illustrate the state of *parties*, (whether *religious* or *political*, they being then synonymous,) within the province of Maryland at that time, is here subjoined by way of note.—It is copied from Mr. Langford's pamphlet, before mentioned, entitled, "A Refutation of Babylon's Fall," &c., and is there thus entitled:

"The declaration and certificate of William Stone, esquire, lieutenant of the province of Maryland, by commission from the right honourable the lord Baltimore, lord proprietary thereof, and of captaine John Price, Mr. Thomas Hatton, and captain Robert Vaughan of his sayd lordship's councill there, and of divers of the burgesses now met in an assembly there, and other *protestant* inhabitants of the sayd province, made the 17 day of April, anno dom. one thousand six hundred and fifty.

We the sayd lieutenant, councill, burgesses, and other *protestant* inhabitants above mentioned, whose names are hereunto subscribed, doe declare and certifye to all persons whom it may concern, That according to an act of assembly heer, and several other strict injunctions and declarations by his sayd lordship for that purpose made and provided, we doe heere enjoy all fitting and convenient freedome and liberty in the exercise of our religion under his lordship's government and interest; And that none of us are any wayes troubled or molested, for or by reason thereof within his lordship's sayd province.

James Cox,
Tho. Steerman,
John Hatche,
George Puddington,
Robert Robines,
Walter Bain,
William Brough,
Francis Poesy,
• William Durand
Anthony Rawlins
Thomas Maydwell
Marke Blomefield
Thomas Bushell
William Hungerford
William Stumpson
Thomas Dinyard
John Grinsdith
William Edwin
Richard Browne

Burgesses.

William Stone, Governor.

Jo. Price,

Robert Vaughan,

Tho. Hatton.

Councill.

Note.—That James Cox and George Puddington were then burgesses for the people at Ann Arundell.

* *Note*—that this is the same man who attests Mr. Strong's pamphlet before mentioned.

William Pell

William Warren

Edward Williams

Raph Beane

John Slingsby

James Morphen

Francis Martin

John Walker

Stanhop Roberts
 William Browne
 John Halsehead
 William Hardwick
 Elias Beech
 George Sawyer
 William Edis
 John Gage
 Robert Ward
 William Marshall
 Richard Smith
 Arthur Turner

William Hawley
 William Smoot
 John Sturman
 John Nichols
 Hugh Crage
 George Whitacre
 Daniel Clocker
 John Perin
 Patrick Forrest
 George Beckwith
 Thomas Warr
 Walter Waterling."

NOTE (LXXVIII.) p. 410.

Some particulars relative to sir *William Davenant* the intended governor of Maryland, may perhaps gratify the curiosity of the reader.

Sir *William* appears to have been a zealous royalist, and had, in 1646, retired with the queen, the prince, and others, into France, on the declension of the king's affairs in England; and was sent by the queen, from Paris, in that year, to the king in England, who was at that time a prisoner with the Scotch army at New Castle, to endeavour to persuade him to give up the *Church of England*, and accede to the terms of the Scotch Presbyterians, particularly in the abolition of Episcopacy. Lord Clarendon, in relating this event, remarks, that sir *William Davenant* was "an honest man, and a *witty*, but in all respects inferior to such a trust." He further states, that sir *William*, in conversation with his majesty upon the subject of his mission, "offering some reasons of his own, in which he mentioned the church slightly, as if it were not of importance enough to weigh down the benefit that would attend the concession, his majesty was transported with so much indignation, that he gave him a sharper reprehension than was usual for him to give any other man; and forbid him to presume to come again into his presence. Whereupon the poor man, who had in truth very good affections, was exceedingly dejected, and afflicted; and returned into France to give an account of his ill-success to those who sent him."

Although sir *William's* talents might not have been adapted "to such a trust," as that just mentioned, nor, perhaps, to that of being governor of Maryland in times like those which immediately succeeded his commission for that office, yet, as a man of wit and literary abilities, he was, without doubt, entitled to all the consideration, in which he appears to have been held by the courtiers of those times, and especially by the prince himself, who was afterwards so remarkable for his patronage, or rather fondness for the company, of men of that character. Sir *William* was the *god-son* of Shakspeare; and tradition, to this day, has handed it down at Oxford, that he was the *real* son of that immortal bard. His father, John Davenant, kept the crown-inn or tavern, (which still remains as an inn, or did so within a few years past,) in that city. The landlady thereof, Mrs. Davenant, sir *William's* mother, was a woman of great beauty and sprightly wit; Shakspeare frequented this house in his journeys from Warwickshire to London. Their son, young Will. Davenant, (born in 1606,) our proposed governor, was then a little school-boy in the town, of about seven or eight years old, and so fond of Shakspeare, that, whenever he heard of his arrival, he would fly from school to see him. From this patronage of Shakspeare, without doubt, originated sir *William's* subsequent fondness for the theatre. On the restoration of Charles the second he applied himself much to writing plays, and was the author of almost as many as his god-father. He was the first person who introduced women, as *actresses*, on the stage; before which female characters were

played by men. He died in April, 1668. The above facts are principally selected from *Bell's* edition of Shakspeare, vol. ii. p. 314, 490.

NOTE (LXXIX.) p. 429.

The Letter or Message of the Lord Proprietary, of the year 1651.

Cecilius, &c., To our right trusty and well beloved Willm. Stone Esq. our lieutenant of our said province of Maryland, and to our right trusty and well beloved the upper and lower houses of our general assembly there, and to all other our officers and inhabitants of our said province, greeting: We cannot but much wonder at a message which we understood was lately sent by one Mr. Lloyd from some lately seated at Ann Arundel within our said province of Maryland to our general assembly held at St. Mary's in March last, but are unwilling to impute either to the sender or deliverer thereof so malign a sense of ingratitude and other ill affections as it may seem to bear, conceiving rather that it proceeded from some apprehensions in them at that time grounded upon some reports in those parts of a dissolution or resignation here of our patent and right to that province, which might perhaps for the present make them doubtful what to do, till they had more certain intelligence thereof from hence, and we hope they are as willing as we that we should so understand it, wherein we shall be the more confirmed, if upon finding by letters this year from their friends here, (and in particular from Mr. Harrison,) those rumours and reports to be false, (as they are,) which we are informed were spread there by some ill-affected persons, they shall for the future give us better satisfaction of their intentions and integrity towards us, not only by conforming themselves with the rest of the inhabitants to the general government of that province, under which they did voluntarily put themselves, but also by concurring in all reasonable things with us for the public peace and happiness of that province, as well as for the firm establishment and preservation of our right there, and especially in those laws, which their own burgesses in a former general assembly, together with the other members thereof, have already consented unto, and unto which we for their full satisfaction sent last year our assent, with such alterations as they themselves desired, as by our said assent under our hand and greater seal at arms transmitted thither more at large appears, unto which we refer you, those laws providing as much for the good and security of the people there as for our own. In consideration, therefore, of a better compliance from those people with us and our government there for the future, we shall not any further expostulate or make any further reflection on that message, till further occasion given us by them, which we hope we shall never have, than by putting them only in mind that a government divided in itself must needs bring confusion and consequently much misery upon all the people under it, wherein the authors of such division, if it should continue, which God forbid, are like to have as great, if not greater, share in the end than any others, whatsoever they may fancy to the contrary: the fomenters of discord may justly expect sad calamities from the same if they do not in time see and rectify the same, which we conceive ourselves bound in honour and conscience and in justice to ourself, as well as for the publick peace and welfare of the people under our government there, to provide for as well as we can, that is, in the first place to admonish them thereof, but if that will not prevail then to make use of our authority with the assistance of well affected persons to compel such factious and turbulent spirits to a better compliance with the lawful government there; And accordingly we do hereby will and require you our said lieutenant to proceed with all such as shall be for the future refractory in that kind, and do also require as well our council and general assembly as all other our officers and well affected inhabitants of our said province to be aiding to you therein for the preservation of the publick peace and quiet of the

people there; and for prevention in time of such miseries and calamities, which may ensue upon such divisions, and in case any of the English inhabitants of that province shall at any time hereafter refuse or neglect to send burgesses to our general assembly there, being lawfully summoned for that purpose, we will and require all the other members of our said assembly, which shall lawfully meet upon such summons, to proceed, as they ought and may lawfully do, in all business belonging to a general assembly there, notwithstanding any such refusal or neglect as aforesaid, and to fine all such refusers or neglectors according to their demerits, and moreover in case they shall wilfully persist in any such refusal or neglect as aforesaid, after they have been admonished thereof by our lieutenant of the said province for the time being or such as he shall from time to time appoint for that purpose, then that they be declared enemies to the publick peace of that province and rebels to the lawful government thereof, and that in such cases our lieutenant and council of the said province for the time being according to our trust reposed in them do efficaciously proceed against them as such, and use all lawful ways and means to reduce them to their due obedience, We also understand that sir William Berkeley hath lately taken upon him to grant a commission to one Edm'd Scarborough of Accomack in Virginia to seat Palmer's Island within our said province, and to trade with the Indians in and through our said province without any lawful authority derived from us; which [is] so strange [an] usurpation upon our rights there, as we cannot easily believe it to be true; but, in case the said Scarborough or any other should presume, upon pretence of any such commission, to seat or trade in or through any part of our said province without a lawful authority derived from us, We will and require you our said lieutenant, according to the trust we have reposed in you, to use your best endeavours to hinder him or them from so doing, and to seize upon his or their person, boats, and goods, and to proceed against him or them according to the laws of our said province, or in default thereof according to your best discretion, for vindication of any such wrong done to us and preservation of our just rights there, and we will and require our said council, general assembly, and all our officers and other the inhabitants of our said province, to be aiding and assisting to you therein, as occasion shall require. And whereas we understand, that, in the late rebellion there [in] one thousand six hundred forty and four, most of the records of that province being then lost or embezzled, no inrollment remains now there of divers patents of land formerly granted by us in that province, which may hereafter prove very prejudicial, not only to us and our heirs, but also to the patentees of any such lands and their heirs, and cause many suits and controversies, in case their patents should by any accident be lost, We therefore for the prevention thereof do hereby will and require you our said lieutenant to issue out a proclamation there, requiring all persons within a certain time therein to be prefixed to produce to our surveyor general or his deputy there all such pattents from us by which they or any of them respectively claim any land within our said province, and that thereupon a true list thereof be delivered unto you, and to require our secretary there also to give you a list of all such pattents of land formerly granted by us [as] are now remaining upon record, whereby upon comparing the said lists together you may see what patents are not remaining upon record, and to require all such persons as claim any land within our said province by virtue of any such pattents not now remaining upon record there, to cause them to be inrolled in our secretary's office there, within some convenient time to be limited by you in the said proclamation for that purpose. And whereas we understand, that certain Indians of several nations, to wit, the Mattapanians, the Wicomocons, the Patuxents, the Lamascons, the Highahwixons, and the Chopticons desire to put themselves under our protection, and to have a grant from us of a certain tract of land in the head of

Wicomoco river, called Choptico, resolving there to live together, that they may neither injure the English nor the English them, the said quantity of land being as we are informed about eight or ten thousand acres, which we conceive may be a means not only to bring them to civility but also to christianity, and may consequently be as well an addition of comfort and strength to the English inhabitants as a safety and protection to those Indians, who having been natives and former inhabitants of that part of our said province, where the English now inhabit, and not only always well affected unto them but also willing to submit themselves to our government, we esteem ourselves bound in honour and conscience to allow them, according to their desire, some place of habitation there, by a title derived from us, and have therefore thought fit for that purpose, and do accordingly hereby authorise and require you our said lieutenant to cause, by a declaration and command in our name under the great seal of our said province, [such tract of land,] as the said Indians above mentioned shall, (with the approbation of you and our surveyor general there,) make choice of, to be erected into a manor for the use of us and of our heirs for ever, with court-baron and court-leet, as occasion shall require in and for the [said] manor, and to be called by the name of Calverton-manor, of which manor our pleasure is, that a thousand acres in the first place be made choice of by our surveyor general there in the best and most convenient place of the said manor and set apart as the demesnes thereof to be reserved for the only use of us and of our heirs; And we do hereby authorise and appoint our surveyor general Robert Clarke, gent. to be our steward of the said manor, and in our name to keep court-baron and court-leet as occasion shall require in and for the said manor, and on our behalf grant by copy or copies of court-roll copyhold-estates for one two or three lives of any part of the said manor except the demesnes thereof to any Indian or Indians that shall desire the same and as he our steward with the approbation of our said lieutenant shall think fit, to be held of the said manor upon such services, to be done to us and our heirs by such copyholder for the same, as our steward, with the approbation of our said lieutenant shall also think fit: Provided, that no one copyhold exceed above fifty acres, unless it be to the werowance or chief head of every of the said six nations abovementioned respectively, and not to any of them above two hundred acres a piece, and that upon every copy so to be granted there be reserved a rent of one shilling sterling or the value thereof to be paid yearly to us and our heirs for every fifty acres of land respectively to be granted as aforesaid, and so proportionally for a lesser or a greater quantity of land, which copyhold-estates, so to be granted by the said Robert Clarke steward of the said manor upon such terms and conditions and not otherwise as aforesaid, We do for us and our heirs hereby fully ratify and confirm to every of the said copyholders respectively, and do hereby declare that they shall be as valid in law to every of them respectively against us and our heirs as if we ourselves had immediately granted the same and as if every one of the said copyhold estates respectively had been passed unto every respective copyholder by a grant under our great seal of the said province, any former commission, instruction, declaration of ours to the contrary in any wise notwithstanding. And, whereas by the third article of our last conditions of plantation for the said province, dated the second day of July one thousand six hundred and forty nine, there is allowed one hundred acres to every adventurer or planter for every person of British or Irish descent transported thither, as by the said conditions unto which relation being had may more at large appear, We understand that it may in divers respects be prejudicial to the general good of that colony, in case so great allowance of land should be long continued to all that shall hereafter come to plant there, because by that means the people will be too remotely situated from one another and the whole province perhaps in a short time be taken up by a few

people, leaving little or no conveniency for others to come and add strength and comfort to them, and therefore according to the advice of you our said lieutenant we have thought fit hereby to declare, that instead of one hundred acres expressed as aforesaid in the said third article of our said conditions there shall be only fifty acres of land within our said province allowed to any adventurer or planter for or in respect of any person of British or other descent which shall be transported thither from and after the twentieth day of June one thousand six hundred fifty and two, which our will and pleasure is shall be granted to every adventurer and planter respectively upon such terms and conditions and for such proportionable rents to be paid to us and our heirs as are expressed in our said last conditions of plantation, which in all other things we will shall stand in force till we or our heirs shall declare our pleasure to the contrary, with such alteration of the oath of fidelity therein expressed as we have formerly agreed unto by our declaration dated the sixth of August in the nineteenth year of our dominion over the said province and in the year of our lord one thousand six hundred and fifty and transmitted thither the last year, and we will and require you our said lieutenant to pursue our directions herein accordingly, our said former conditions of plantation or any former commission, warrant, or instruction to the contrary notwithstanding.—And for the better publication and remembrance of the bounds between Virginia and Maryland, and prevention of any controversies, which may otherwise hereafter happen between the inhabitants of Virginia and those of our said province about the same, We require you our said lieutenant to encourage some English as soon as you can to take up such land as shall be due unto them in our said province by virtue of our conditions of plantation or other warrant from us near to the bounds of our said province according to the maps thereof which we sent thither about two years since, and to pass grants in our name under our great seal to such as shall desire the same of so much land in those parts of our said province as shall be due unto them as aforesaid, especially on or near the bounds of our said province on that tract of land which is commonly called the Eastern Shore lying between the bay of Chesapeake and the sea, and also on or near the bounds of our said province on that tract of land which lyeth between the creek or river that runneth by Patowmack-town called in the mapp Patowmack river on the south, and the river which runneth by Piscattoway called in the mapps aforesaid by the name of Piscattoway river on the north, in which last tract is included, as we are informed, that place where Mr. Giles Brent now resides called by him Peace, and also the country called there the Doages; and for the better encouragement of English to make choice of their dividends of land and to seat themselves in the places aforesaid, We do hereby authorise and require you our said lieutenant to grant in our name under our great seal to any adventurer or planter that shall make choice of his dividend and seat a plantation of English on the Eastern Shore or on that tract of land wherein the Doages is included as aforesaid one hundred acres of land in any place of either of those two parts of our said province to him and his heirs for ever for or in respect of every person of British or Irish descent which he shall transport from other parts into our said province according to our last conditions of plantation above-mentioned, and upon such terms and conditions as are therein expressed, which we will shall continue in force in all things to those two last-mentioned parts of our said province till we or our heirs shall declare our further pleasure to the contrary, any thing herein contained to the contrary in any wise notwithstanding.—When we made capt. William Mitchell one of our council of state in that province, which we were induced unto by his ability of understanding, we conceived that he would have been a good assistance to you our said lieutenant and the rest of our council for the better conduct of our government there, and did hope that according to his serious professions to us he would not

only by his advice but also by his example of life have conduced much to the advancement of that province as well as to our honour and his own reputation, but contrarily it seems he hath not only somented divisions but also lived a most scandalous life, whilst he was there, with certain women which he carried from hence with him there, leaving his wife here in a miserable condition, (all of which was unknown to us till of late since his return from those parts,) and did likewise, whilst he was there, most prophanely in publick discourse profess himself of no religion at all, which we have, by several evidences here as well as from thence, so good proofs, as we find upon our charging him therewith since his return from thence hither, he cannot make any good justification of himself therein, Wherefore we do much lament our misfortune in giving him any countenance or authority who hath so much abused the same by dishonouring us and our government there as much as in him lay, and have thought fit to discharge him thereupon from being any more of our council of state there, as we do by these presents declare him to be discharged from it and also from all other publick authority of justice of peace or otherwise whatsoever in our said province, requiring you our said lieutenant not to permit him hereafter, if he shall return again into our said province, to act there in any thing for the future as one of our council of state or justice of peace of our said province; and for the more timely prevention of any such high offences to Almighty God and such dishonour to us and our said government hereafter as aforesaid by any in eminent authority there, We do hereby declare, that in case any person, who is or shall from time to time be of our council of state or commander of a county or justice of peace in our said province, shall (which God forbid, and we hope will never more happen,) after the publication hereof there live scandalously or viciously with any lewd woman, or profess himself of no religion, and shall be legally convicted of either of the said crimes by his own confession or the testimony of two sufficient witnesses, or shall be twice legally convicted by his own confession or the testimony of two sufficient witnesses of being an usual drunkard, swearer, or curser, we do authorise and require our lieutenant of the said province for the time being to suspend any such person from being of our council of state, commander of a county, or justice of the peace in our said province, and in the room of any such commander of the county so convicted and suspended to appoint some other able and fit person to be commander of that county whereof any such person so convicted and suspended as aforesaid had command, till the cause or causes of such suspension in every of the respective cases aforesaid and proofs of the suspended person's misdemeanors be certified to us, (which we require our lieutenant in such cases from time to time to certify us of, with all convenient expedition,) and until our further pleasure be known therein, either for the discharging or restoring any person which shall be so suspended as aforesaid, willing and requiring you our said lieutenant, as you tender the glory of God, our honour, and the publick welfare of that colony, to be very diligent and circumspect in discovery of any such scandalous and evil comportments and misdemeanors for the future of any of our said council, commander of a county, or justice of peace in our said province as aforesaid, and to proceed with any offender in that kind as you are hereby required and directed, and to cause them also to be further punished according to the laws of that our said province in such cases provided; And we require all those of our said council from time to time to give their due attendance on our said lieutenant at all general assemblies and provincial courts in our said province for the better conduct of the publick affairs and administration of justice according to the great trust reposed in them by us, by which due performance of the duty of their calling they will much endear us unto them and not only advance therein our honour and the publick happiness of that colony, but also their own reputation; but in

case any of our said council being duly summoned by our said lieutenant there for the time being to give his attendance on him at any general assembly or provincial court in our said province, should so much forget himself and us and the good of that colony, as without leave from our said lieutenant or some justifiable impediment to forbear to come or be absent any day from the said assembly or court, We will and require [our said lieutenant] to proceed against such person of our council, who shall so forbear to come or absent himself as aforesaid by fining him according to the laws of our said province, or in default thereof according to the best discretion of him our said lieutenant and the rest of our said council or the major part of them, who shall then be present in any such court or assembly, when any such person shall so absent himself as aforesaid; and furthermore that our said lieutenant do give us notice of any such neglect of any of our said council, and send us good proof thereof, to the end that we may as we see cause put others in their room who will give better attendance on the public affairs there. And, whereas we find that some ill-affected persons to us and the publick peace of that colony do every year, by publishing there many false reports concerning us and our affairs, as well as by other subtle means, endeavour to disquiet the minds of the people there and to infuse jealousies and doubts in our officers and others, thereby to breed diffidence and division if they can between us and them as well as amongst themselves, which may in time prove to be of dangerous consequence, to the ensnarement of divers honest men, whose intentions are good were they not so deluded, We do, therefore, will and require you our said lieutenant and council to use your best endeavours upon all occasions for the timely suppression of all such false rumours and reports as aforesaid, and to find out the authors and publishers thereof, and to cause them to be punished according to their demerits; and we also recommend it to the consideration of our general assembly there, whether it be not convenient to make a law in that province, as there is in England, for the punishment of all such as shall publish false news to the disturbance of the minds of the people and the publick peace, for the better prevention of the mischiefs, which by experience have been found to be caused thereby, not doubting but our said assembly will be as sensible of any dishonour or wrong, which may be done unto us by any such false reports, as we are and ever shall be of any prejudice which may happen by that or any other way to them or to any of the inhabitants of our said province. For the better manifestation whereof and of our mind in all other things herein contained, We have thought fit, and do hereby will and require our lieutenant of our said province of Maryland for the time being to cause this our declaration to be read to the upper and lower houses of our general assembly there, to be published at the usual places of publishing our ordinances and edicts in our said province.—Given under our hand and greater seal at arms the six and twentieth day of August in the twentieth year of our dominion over the said province, and in the year of our lord one thousand six hundred fifty and one.

[Taken from the book in the council chamber, entitled, "Assembly Proceedings from 1637 to 1653," p. 424, &c.]

NOTE (LXXX.) p. 435.

"Instructions for captain Robert Denis, Mr. Richard Bennet, Mr Thomas Stagge, and captain Willian Claybourne, appointed commissioners for the reducing of *Virginia*, and the inhabitants thereof, to their due obedience to the commonwealth of England.

[*Thurloe's State Papers*, vol. I. page 197.]

Whereas the parliament of England, by an act entituled an act prohibiting trade with the Barbadoes, Virginia, Bermudas, and Antegoa, hath committed to

this council several powers therein expressed, for the settling, reducing, and governing the said islands, printed copies of which acts are herewith delivered unto you; in pursuance whereof a fleet is now set forth, victualled, armed, and manned, under the command and conduct of captain Robert Denis, to effect, by the blessing of God, the ends aforesaid; and for the management of that service you are jointly nominated and appointed commissioners, and for your better directions and proceedings therein you are to follow and pursue these instructions following:

Such of you as are here, are to repair on board the ship John, or the Guinea frigot of the states, which of them you shall think fit; and, wind and weather permitting, to sail to Virginia, as captain Robert Denis shall direct and appoint.

And upon your arrival at Virginia, you, or any two or more of you (whereof captain Robert Denis to be one) shall use your best endeavours to reduce all the plantations within the bay of Chesopiaik to their due obedience to the parliament of the commonwealth of England. For which purpose you, or any two or more of you (whereof captain Robert Denis to be one) have hereby power to assure pardon and indemnity to all the inhabitants of the said plantations, that shall submit unto the present government and authority, as it is established in the commonwealth; in which pardons you may make such limitations and * * * two or more of you (whereof captain Robert Denis * * * * *

And in case they shall not submit by fair ways and means, you are to use all arts of hostility, that lie in your power to enforce them; and if you shall find, that the people so stand out, as that you can by no other ways and means reduce them to their due obedience, you, or any two or more of you (whereof captain Robert Denis to be one) have power to appoint captains and other officers, and to raise forces within every of the plantations aforesaid, for the furtherance and good of the service; and such persons as shall come unto you, and serve as soldiers, if their masters shall stand in opposition to the present government of this commonwealth, you, or any two or more of you (whereof captain Robert Denis to be one) have hereby power to discharge and set free from their masters all such persons so serving as soldiers.

You shall cause and see all the several acts of parliament against kingship and the house of lords to be received and published; as also all the acts for abolishing the book of common prayers, and for subscribing the engagement, and all other acts herewith delivered you.

You or any two or more of you, have full power to administer an oath to the inhabitants or planters there, to be true and faithful to the commonwealth of England, as it is now established, without a king or a house of lords.

You, or any two or more of you (whereof captain Robert Denis to be one) have power to give liberty to the inhabitants and planters, who shall have taken the engagement formerly mentioned, to choose such burgesses as they shall think fit; and send to the place you shall appoint, for the better regulating and governing of affairs there; provided that nothing be acted contrary to the government of this commonwealth of England and the lawes there established.

You shall cause all writs, warrants, and other process whatsoever to be issued forth as occasion shall require, in the name of the keepers of the liberty of England by authority of the parliament.

In case of mortality, or absence of captain Robert Denis, you or any two or more of you, have power to put in execution these instructions.

In case of mortality, or absence of captain Robert Denis, Edmund Curtis, commander of the Guinea frigot, is hereby impowered to act as commissioner with you, or any two or more of you; and he is also in the absence of captain Robert Denis to take the charge and command of the fleet, so far as concerns the shipping, according to the power given to captain Robert Denis.

And lastly, as we doubt not but you will use your best diligence and care in carrying on of this affair of consequence, with which you are intrusted, and that by your good endeavours it will have a good issue ; so the council will take the same into consideration, that respect may be had of your pains and travel therein, and of a recompence agreeable to your service, when the same shall be completed, and work, upon which you are employed, shall be finished.

Signed in the name and by order of the council of state appointed by authority of parliament. JO BRADSHAWE, *President*."

Whitehall, 26th September, 1651.

[Taken from Hazard's Collections, vol. 1, p. 556.]

NOTE (LXXXI.) p. 443.

PROCLAMATION.

"By the Commissioners of the Council of State for the Commonwealth of England.

Whereas the right honourable the council of state for the commonwealth of England by authority of parliament have committed to us the commissioners several powers for the reducing settling and governing of all the plantations within the bay of Chesapeake, as by their commission and instructions bearing date at Whitehall the 26th day of September, 1651, may appear, in pursuance whereof the foresaid commissioners having applied themselves to the governor and council of Maryland, (one of the plantations within the limits aforesaid requiring them to submit thereunto and to act accordingly, and having tendered the same several times unto them, so that they might remain in their places, conforming themselves to the laws of the commonwealth of England in point of government only, and not infringing the lord Baltimore's just rights ; which they having denied and refused as being inconsistent with the patten of the lord proprietor and their oaths made to him ; In obedience, therefore, to the said council's commands in their said commissions to us directed, for the preservation of the honour and interest of the commonwealth of England for settling the colony of Maryland in their due obedience and peace, and for the true administration of justice and right to the inhabitants thereof, until further order can be taken therein, and until the council of state's further pleasure shall be known ; We the said commissioners have hereby thought fit to publish these orders following, requiring all the people of this province to see the same kept and observed :

That all writs warrants and process whatsoever be issued forth in the name of the keepers of the liberty of England by authority of parliament, that they be signed under the hand of one or more of the council hereafter named, viz. Robert Brooke, esqr., colo. Francis Yardley, Mr. Job Chandler, captain Edward Windham, Mr. Richard Preston, and lieutenant Richard Banks.

That the said council of Maryland, first taking the engagement, do cause the same to be tendered to all the inhabitants in these words,—We, whose names are subscribed, do promise and engage ourselves to be true and faithful to the commonwealth of England, as it is now established, without king or house of lords.

That the said council of Maryland, or any two or more of them, whereof Robert Brooke, esqr., to be one, do govern and direct the affairs thereof, and hold courts as often as they think fit for that purpose, as also that they summon an assembly to begin 24th of June next coming, the burgesses whereof are only to be chosen by such freemen as have taken the said engagement, and that neither by the said council nor in the said assembly any thing be acted contrary to the laws of England there established, or to their obedience due to the commonwealth of England.

That the commissions for the governor and council be hereby declared void

and null, and to be delivered into the hands of us the commissioners, as also that all records and other matters and things relating to the government of Maryland be delivered into the hands of the council herein by us nominated.

RICHARD BENNETT
EDMUND COURTEIS
WILLM. CLAIBORNE."

Dated at Saint Mary's the 29th day of March, 1652.

[Taken from the book in the council chamber, entitled, "Council Proceedings from 1636 to 1657," p. 267.]

NOTE (LXXXII.) p. 448.

"By the Commissioners of the Council of State for the Commonwealth of England.

Whereas the government of this province was for that present until further time and opportunity of consideration left in the hands of Robert Brooke, esqr., and some others, as by an order or proclamation of the commissioners of the parliament and council of state for the commonwealth of England, dated at St. Mary's the 29th of March last, appeareth, referring the further settlement thereof to an assembly appointed to be held the 24th day of this month, and whereas it appeareth that captain William Stone esqr. governor and Mr. Thomas Hatton secretary of this province were then left out upon some misapprehension or misunderstanding as they alledge in that particular of issuing out writs and all other process whatsoever in the name of the keepers of the liberties of England by authority of parliament, and forasmuch as the foresaid captain William Stone esqr., at the motion and request of the foresaid commissioners and the desire of the inhabitants is content to reassume his former place of governor here and to act according to the foresaid order or proclamation and according to his former power, reserving and saving to himself as also to the aforesaid Mr. Thomas Hatton, Robert Brooke, esqr., and captain John Price their oaths made to the lord Baltimore lord proprietor of this province until the pleasure of the state of England be further known, it is therefore ordered by the aforesaid commissioners with the advice and consent of the council and others the inhabitants, that capt. William Stone esqr., be the governor and Mr. Thomas Hatton, Robert Brooke, esqr., captain John Price, Mr. Job Chandler, colo. Francis Yardley, and Mr. Richard Preston be of the council for this province, who are to govern, order, and direct the affairs thereof in all matters according to the former power and the order or proclamation aforesaid, and to hold courts for the better administration of justice as often as they shall think fit until further orders of England therein, and in the mean time all persons whatsoever are required and commanded to take notice thereof and to conform thereunto accordingly, and since the government is so settled as is known to be to the good liking of the inhabitants it is conceived for that and several other reasons that there is no absolute necessity of a general assembly at present.—Given under our hands at St. Mary's the 28th day of June, 1652.

RICHARD BENNETT,
WILLIAM CLAYBORNE."

[Taken from the book entitled, "Council Proceedings from 1636 to 1657," p. 269.]

NOTE (LXXXIII.) p. 453.

"The peace with the Sasquehanagh Indians, made anno. 1652.

"Articles of peace and friendship treated and agreed upon the 5th day of July, 1652, between the English nation in the province of Maryland on the one party, And the Indian nation of Sasquesahanogh on the other partie, as followeth :

1. First, that the English nation shall have, hould, and enjoy to them their heires and assigns for ever, all the land lying from Patuxent river unto Palmer's island on the westerne side of the baye of Cheseapeake, and from Choptank river

to the north east branch which lyes to the northward of Elke river on the eastern side of the said bay with all the islands, rivers, creeks, ———* fish, fowle, deer, elke, and whatsoever else to the same belonging, excepting the isle of Kent and Palmer's island which belongs to captain Clayborne, But nevertheless it shall be lawful for the aforesaid English or Indians to build a howse or ffort for trade or any such like use or occasion at any tyme upon Palmer's island.

2dly. That if any damage or injury be done on either side at any tyme hereafter, either by the English or Indians aforesaid, or by any other allies, confederates, tributaries, or servants, that reparation be made and satisfaction given from each other from tyme to tyme as the case requires, and as in reason should be done betweene those that are friends and that desire soe to continue.

3dly. That if any the people or servants belonging to the English or to the Indians shall goe away or run away from either side, they shall not be concealed or kept away from each other, But shall with all convenient speede be returned back and brought home, And satisfaction to be made in a reasonable way for transportation by land or water to those that bring them in.

4thly. That upon any occasion of business to the English, or any messadge or the like, the Indians shall come by water and not by land, That there shall not be above eight or ten at the most at one tyme, And that they bring with them the token given them by the English for that purpose, by which they may be known and entertained, As also that the English on their partes, when they send to the Indians, the messenger shall carry the token which wee have received from them.

5thly. And lastly, that these articles and every particular of them shall be really and inviolably observed, kept, and performed by the two nations, before named, and by all the people belonging to them, or that are in amity with them, for ever to the end of the world, And that all former injuries being buried and forgotten from henceforward they doe promise and agree to walke together and carry one towards another in all things as friends, and to assist one another accordingly, But if it soe happen at any tyme hereafter that either party is weary of the peace and intends war then that the same shall be signified and made knowne each to other by sending in and delivering up this writting before any act of hostility or enmity be done or attempted, and that twenty days warning thereof be given beforehand.

These several articles were solemnly and mutually debated and concluded at the river of Severne in the province of Maryland by Richard Bennett esquire, Mr. Edward Lloyde, capn. William Ffuller, Mr. Thomas Marsh, and Mr. Leonard Strong commissioners authorized and appointed by the governor and counsell of the aforesaid province, And by Sawahegeh treasurer, Auroghtaregh, Scarhuhadigh, Ruthchogah, and Nathheldianeh warr captaines and councillors of Sasquehanogh commissioners appointed and sent for that purpose by the nation and state of Sasquehanagh, And were fully ratified, done, and confirmed by several presents, guifts, and tokens of friendship mutually given, received, and accepted on both sides. In witness whereof the aforesaid commissioners in behalf of the aforesaid nation have hereunto sett their hands and seales the day and yeare above written.

Ri. Bennett—Edw. Lloyd—Tho. Marsh

Will. Fuller—Leo. Strong.

Locus

×

Sigilli.

The mark of

∟

Sawahegeh

The mark of

∟

Auroghtaregh.

* A word not legible in the record.

The mark of


 Scarhuhadigh.
The mark of  RuthchogahThe mark of  Nathheldianch.

Locus

X

Sigilli

William Lawson

Jafer Peter—for the Sweades governor
Witness's

[Taken from "Council Proceedings, Lib. HH," p. 62.]

NOTE (LXXXIV.) p. 506.

"August 8th, 1654.

Commission for the administration of justice in the province of Maryland now reduced and settled under the obedience of the commonwealth of England in the name of his highness the lord protector of England, Scotland, Ireland and all the dominions thereto belonging.—Given by the honourable Richard Bennet, esqr., and colo. William Claiborne commissioners for his highness to the reducing and settling the plantations of Virginia and Maryland under the obedience aforesaid.

Whereas by several orders drawn up and published at St. Mary's the 29th of March and the 28th of June, 1652, the province of Maryland was reduced and settled under the authority and obedience of the commonwealth of England as to the government thereof by special order and command of the council of state by commission from the parliament, and was left in the hands of captain William Stone, Mr. Thomas Hatton, and others, who are required to issue out all writs and other process in the name of the keepers of the liberty of England according to the express words of the commission and instructions for reducing settling and governing of all the plantations in the bay of Chesapeake to the obedience of the commonwealth of England as in and by the aforesaid orders or proclamations may and doth appear, and whereas the aforesaid captain William Stone by special order from the said lord Baltimore (as it appeareth) was persuaded and induced to go away from his obligation and the trust reposed in him by issuing forth writs and all other process in the name of the lord proprietary of this province placing and displacing those of the council, and imposing an oath upon the inhabitants contrary to and inconsistent with their engagement and oath to the commonwealth of England upon the penalty and forfeiture of the lands of all such as should refuse to take the same within three months after publication thereof which were then to be entered and seized upon for his lordship's use thereby occasioning great discontent and disturbance among the inhabitants besides the irregularity and cruelty of the said proceedings and the opposition and rebellion therein to the commonwealth of England and his highness the lord protector, and further whereas by a late proclamation dated the 4th of this month published in the said province both the commissioners and the people (who adhered to their engagement to the commonwealth of England and refused to own or acknowledge any other name or authority as to government or to take any other oath but what they had already taken to that power) were charged that they drew away the people and led them into faction sedition and rebellion against the lord Baltimore, whereby not only the lands houses and plantations of many hundreds of people but also their estates and lives were liable to be taken away at the pleasure of the aforesaid lord Baltimore and his officers, by all which unjust and unreasonable proceedings the people were put upon a neces-

sity of standing upon their own defence for the vindication of their just rights and liberties and freeing themselves from those great oppressions whereby the whole province was very much threatened and apparently endangered, for the prevention whereof as also for the relief of those that were so deeply distressed and for the settlement of the province in peace and in their due obedience under his highness, the said commissioners by authority derived to them from his highness the lord protector applied themselves to capt. William Stone the governor and the council of Maryland, according to a declaration of the 15th of this month herewith published, who returning only opprobrious and uncivil language presently mustered his whole power of men and soldiers in arms intending to surprise the said commissioners and (as could be imagined) to destroy all those that have refused the said unlawful oath and only kept themselves in their due obedience to the commonwealth of England under which they were reduced and settled by the parliament's authority and commission, then the said commissioners in quiet and peaceable manner with some of the people of Patuxent and Severn went over the river of Patuxent and there at length received a message from the said captain Stone that the next day he would meet and treat in the woods, and thereupon being in some fear of a party to come from Virginia he condescended to lay down his power lately assumed from the lord Baltimore and to submit (as he had once before done) to such government as the commissioners should appoint under his highness the lord protector.

It is therefore ordered and declared by the aforesaid commissioners that for the conservation of the peace and publick administration of justice within the aforesaid province of Maryland captain William Fuller, Mr. Richard Preston, Mr. William Durand Mr. Edward Lloyd captain John Smith Mr. Leonard Strong Mr. — * Lawson Mr. John Hatch Mr. Richard Wells and Mr. Richard Ewen or any four of them whereof captain William Fuller Mr. Richard Preston or Mr. William Durand to be always one to be commissioners for the well ordering directing and governing the affairs of Maryland under his highness the lord protector of England Scotland Ireland and the dominions thereof and in his name only and no other and to proceed therein as near as may be to the laws of England to appoint and hold courts for the administration of justice and right in such places and at such times as they shall think meet and necessary and any of the commissioners of the quorum to issue out writs warrants and subpoenas as, &c.,† as also that they summon an assembly to begin on the 20th day of October next for which assembly all such shall be disabled to give any vote or to be elected members thereof as have borne arms in war against the parliament or do profess the Roman Catholic religion, and the said Mr. William Durand is hereby appointed to be secretary to the said commissioners and to receive the records from Mr. Thomas Hatton, and captain John Smith to be sheriff for the ensuing year.—Dated at Patuxent river in the province of Maryland the 22d day of July, 1654.

Recordum Verum. Teste
Wm. Durand Secr.

RICHARD BENNET,
WM. CLAIBORNE.

Sir,—You are hereby required to deliver the records of this province and all the papers concerning the same unto Mr. William Durand or whom he shall appoint to receive them from you. July 22d, 1654.

RICHARD BENNET,
WM. CLAIBORNE."

To Mr. Thomas Hatton—these.

[Taken from "Council Proceedings from 1636 to 1657," p. 306 to 310.]

* This blank so in the record, but from other documents it appears to have been meant for Mr John Lawson.

† So in the record.

NOTE (LXXXV.) p. 529.

*The copy of a letter intended for his Highnesse.**"May it please your Highnesse :*

"Having formerly had the honour to relate to your highness not only in your army, but also as a domestick servant, I humbly thought it my duty to give your highness a true relation of the late disaster of this countrey, which although it bee not a place any way considerable or worth your highness trouble, yet when I consider the great care and pains your highness hath formerly taken both below yourselfe, and almost incredible to those that have not been eye-witnesses of them, for the true settling of government, and avoyding the needless shedding of blood, it gives encouragement to my pen, and assures me that the score upon which I write, will obtain a pardon of your highness for my presumption, it being humbly and in the name of that great God, (whom I know had not your highness feared would never have so palpably helpt your highness in your greatest necessity, and fought your battels,) to beg a boon which will I doubt not, absolutely end the needless shedding of blood in this part of the world, in regard now both parties pretend to fight for your highness : My lord, my humble petition to your highness is, that your highness would be pleased graciously to condescend so low as to settle the country, so as wee may heere understand the absolute pleasure and determinate will of your highness therein, the disobeyers of which cannot after your highnesse's known pleasure but in a moment perish, and the rest live secure and happie. My lord I am an absolute stranger heere as yet having not beene a month in the countrey, in which time this unfortunate action fell out, so much the sadder, in regard of the common enemy the Indian who ever takes advantage by our intestine troubles being both cruel and potent, and therefore I hope will be a motive to further the charitable condescending of your highnesse for settling the country. My lord having had a very tedious passage being necessitated to stay above two months in Bermudas and above one month in Virginia, so that I was above halfe a year from the time that I came out of England to my arrivall in Maryland, at which arival I found the country in a great disturbance, the governour captain *Stone* being ready to march with his army (which heere is considerable if it consist of 200 men) against a partie of men at a place called *ANNE-ARUNDEL* who the yeer before (pretending a power from your highnesse as also that your highnesse had taken the lord *Baltimore's* country from him) bred a great disturbance in the countrey and withall tooke away the governour's commission from him, which governour being since informed by a gentleman by name *Mr. Eltonhead* (one that came out of England two or three months after me) that the lord *Baltimore* kept his patent, and that your highnesse had neither taken the lord *Baltimore's* patent from him nor his land, hee thought hee might act by the contents of his former commission from the lord *Baltimore* and accordingly went up to reduce those people to the lord *Baltimore's* government, but still under your highness command, as formerly under the king's, having heer in the country before I came first solemnly proclaymed your highness, as also in all proclamations and public edicts ending with *God preserve the lord protector, and the lord proprietary*. Now going up to reduce these people if possible by fair meanes, a declaration to which purpose the governour desiring me to bear him company the march, I got leave to carry to them, in the end of which the governour did protest, as in the presence of Almighty God, that he came not in a hostile way to do them any hurt, but sought all meanes possible to reclaime them by faire means ; and to my knowledge at the sending out of parties (as occasion served) he gave strict command, that if they met any of the *Anne-Arundell* men they should not fire the first gun, nor upon paine of death plunder any : these were his actings to my knowledge upon the march ; but coming nearer to them, there was a ship a merchantman called

the *Golden Lion*, one *Hemans* commander, and as appears, hired by them, having since received his reward of them, who seeing the governour land his men under the command of his ship, shot at them as they landed over night, and the next morning continuing his course (as I am credibly informed) kild one of the governour's men, and so began the war which after fell out, for the *Anne-Arundell* men comming suddenly upon them on the one side, and the *Golden Lyon* being on the other side, they being in a neck of land invironed round with water except one little place by which the *Anne-Arundell* men came in upon them, where after a skirmish the governour upon quarter given him and all his company in the field, yielded to be taken prisoners, but two or three dayes after the victors condemned ten to death, and executed fowre, and had executed all had not the incessant petitioning and begging of some good women sav'd some, and the souldiers others; the governour himselfe being condemned by them and since begd by the souldiers, some being saved just as they were leading out to execution, and since fall a sequestering their estates, and taking away what they have as if they were meere malignants, and had fought directly against your highnesse, in which I cannot but speake my conscience, knowing that at their first setting out the generall cry was that they went to reduce the country and bring it under the obedience of your highnesse and the lord proprietary, as also the governour who protested to mee before he went out, that had he not been very credibly informed that your highnesse had not taken away the lord *Baltemore's* patent, nor his land, as the *Anne-Arundell* men pretended, he would not stirre in the businesse. My lord, the reason why I take upon mee to give your highnesse an account of this action is nothing but out of my duty to your highnesse to give a true and impartiall account of the proceedings heare, in regard they still keepe the governour and most of the councell prisoners, as also all the chiefe officers till all the shipping is already gone out of the country except one, and till that is gone I heare for certain none of them shall be releast, by which meanes they are not only debar'd from comming for England (as some desired to answer for what they had done before your highnesse and were denied it) but are likewise hindered from writing their grievances, as not being suffered to write to their own wives, but their letters are broke open, so that I cannot but thinke my selfe bound in conscience to declare the truth, as also to remaine so long as I possesse a being in this world,

Maryland this 13 of
April, 1655."

My Lord,
your highnesse most obedient and ever
Loyal subject
L. BARBER."

"For the Right Honourable the Lord
Baltemore, these present.

Right Honourable:

I am sorry at present for to let your honour understand of our sad condition in your province. So it is, that my husband, with the rest of your councell, went about a month agoe with a party of men up to *Anne-Arundell* county, to bring those factious people to obedience under your government. My husband sent Dr. Barber with one Mr. Coursey with a message to them, but they never returned againe before the fight began. Also he sent one Mr. Packer the day after, with a message, and he likewise never returned, as I heard: but so it is, that upon Sunday the 25. of March, they did ingage with the people of *Anne-Arundell*, and lost the field, and not above five of our men escaped; which I did conceive ranne away before the fight was ended: the rest all taken, some killed and wounded; my husband hath received a wound in his shoulder, but I heare it is upon the mending. My husband, I am confident, did not thinke that they would have engaged, but it did proove too true to all our great damages; They, as I heare, being better provided than my husband did expect; for they hired

the captain of the *Golden Lion*, a great ship of burden, the captain's name is *Roger Hemans*, a young man, and his brother, who have been great sticklers in the businesse as I hear, captaine *Heman* was one of their councill of war, and by his consent would have had all the prisoners hanged; but after quarter given, they tried all your counsellors by a councill of warre, and sentence was passed upon my husband to be shot to death, but was after saved by the enemies owne souldiers, and so the rest of the counsellors were saved by the petitions of the women, with some other friends which they found there; onely Master *William Eltonhead* was shot to death, whose death I much lament, being shot in cold bloud; and also lieutenant *William Lewis*, with one Mr. *Leggat*, and a Germane, which did live with Mr. *Eltonhead*, which by all relations that ever I did heare of, the like barbarous act was never done amongst christians. They have sequestred my husband's estate, only they say they will allow a maintenance for me and my children, which I doe beleve will bee but small. They keep my husband, with the rest of the councill, and all other officers, still prisoners: I am very suddenly, God willing, bound up to see my husband, they will not so much as suffer him to write a letter unto mee, but they will have the perusall of what hee writes. Captain *Tylman* and his mate Master *Cook* are very honest men, and doe stand up much for your honour; they will inform you of more passages than I can remember at the present; And I hope my brother will be downe before captain *Tylman* goes away, and will write to you more at large; for he is bound up this day for to see his brother, if they doe not detain him there as well as the rest; the occasion I conceive of their detainment there is, because they should not goe home, to informe your honour of the truth of the businesse before they make their owne tale in England, which let them doe their worst, which I do not question but you will vindicate my husband's honour which hath ventured life and estate to keep your due heere, which by force hee hath lost. And they give out words, that they have won the country by the sword, and by it they will keepe the same, let my lord protector send in what writing hee pleaseth. The gunner's mate of *Hemans*, since his comming down from *Anne-Arundel* to Patuxent, hath boasted that he shot the first man that was shot of our party. All this I write is very true, which I thought good to informe your lordship, because they will not suffer my husband for to write himselfe: I hope your honour will be pleased for to looke upon my sonne, and for to wish him for to be of good comfort, and not for to take our afflictions to heart. And nothing else at present, I rest your honours most humble

Servant,

VIRLINDA STONE.

Postscript.—I hope your honour will favour me so much, that if my sonne wants twenty or thirty pounds you will let him have it, and it shall be payd your honour againe.

Hemans the master of the *Golden Lion* is a very knave, and that will be made plainly for to appeare to your lordship, for he hath abused my husband most grossly.

[The foregoing letters were taken from a pamphlet, entitled, "A refutation of Babylon's Fall," &c. by Mr. *John Langford*, published in England in 1655.]

NOTE (LXXXVI.) p. 533.

"*The Protector to the Commissioners of Maryland.*

["*Thurloe's State Papers*, Vol. IV. p. 55.]

"It seems to us by yours of the 29th of June and by the relation we received by colonel Bennet that some mistake or scruple hath arisen concerning the sense of our letters of the 12th of January last; as if by our letters we had intimated that we would have a stop put to the proceedings of those commissioners, who

were authorised to settle the civil government of Maryland, which was not at all intended by us, nor so much as proposed to us by those who made addresses to us to obtain our said letter; but our intention (as our said letter doth plainly import) was only to prevent and forbid any force or violence to be offered, by either of the plantations of Virginia or Maryland from one to the other upon the differences concerning their bounds, the said differences being then under the consideration of ourself and council here; which for your more full satisfaction we have thought fit to signify to you, and rest

Whitehall, 26th of September, 1655.

Your loving Friend."

[Taken from Hazard's Collections, vol. 1, p. 594.]

NOTE (LXXXVII.) p. 535.

"Commission to Cap. Josias Fendall.

"C. BALTEMORE—

"Cecilius absolute lord and proprietary of the province of Maryland and Avalon lord baron of Baltemore, &c.; To all the inhabitants and people in Maryland and to all others whom these presents shall any way concerne, greeting, Know ye that for divers special causes and considerations us hereunto moving, Wee have revoked and determined and by these presents do declare that wee do hereby revoke and absolutely determine all former commissions granted unto William Stone, esq'r. or to any other person or persons concerning the government of the said province of Maryland and all power and authority granted unto him thereby or to any person whatsoever, Nevertheless upon consideration that the people there cannot subsist and continue in peace and safety without some good government be settled and established as well for the cherishing and supporting of the good people and well affected as for the punishment of the vicious and disorderly persons there, Wee have thought fit to nominate constitute and appoint, and wee do hereby nominate constitute and appoint Josias Fendall of the province of Maryland in America gent: our lieutenant and chiefe governor of the said province of Maryland with the islands thereunto belonging, And by these presents do grant unto him the chiefe command power and authority under us over the said province and islands thereunto belonging, to have and to hould the same during our pleasure in as ample and large manner to all intents and purposes as was formerly granted by us unto captaine William Stone our late lieutenant there; And wee do hereby nominate constitute and appoint the said captaine William Stone, Mr. Thomas Gerard, colonell John Price, Mr. Job Chandler, and Mr. Luke Barber, and such other person or persons not exceeding three in number as the sayd Josias Fendall shall nominate and appoint to be of our counsell in the said province, and to have the like and as ample authority, privileges, and advantages as those of our counsell formerly had there; And wee doe further heereby authorise the sayd Josias Fendall to appoint such a fitt person or persons, for whom he will be responsible, as he shall thinke fitt to be our secretary and receiver generall there for the present till our pleasure be further knowne therein, and to cause all rents, arreares of rents, and all other dues, belonging to us in that province to be for our use demanded, leavyed, and payd to our said receiver so to be nominated and appointed by him the said Josias Fendall as aforesaid, and to be afterwards disposed of according to such instructions or directions as wee have or shall give to him the said Josias Fendall for that purpose.—Given under our hand and greater seale at armes the tenth day of July in the five and twentieth yeare of our dominion over the said province of Maryland and in the yeare of our Lord God one thousand six hundred fifty six."

[Taken from the record book in the council chamber, labelled on the back, "Council H H, 1656 to 1668," p. 6.]

NOTE (LXXXVIII.) p. 541.

"Mr. R. Bennet and Mr. Matthew to Secretary Thurlow.

[Thurlow's State Papers, vol. V. p. 482.]

Sir,—Since our last application to your honour, we hear that the committee of trade have delivered in their report to his highness; but you may be pleased to take notice that nothing is either said or done by them concerning the Virginia petition, which relates very materially to the business of Maryland, especially in that particular of the bounds by them claimed. And whereas something is offered by the committee, as the agreement of the lord Baltimore and us, it is true, that upon a motion of the committee something was proposed by us, and answered by him to that purpose, that if his highness should think fit to re-establish the lord Baltimore in the government, and to issue out all writs and processes in his own name, that then some provision to be made for the indemnity of the people there in relation to the reducement, that so the lives and estates of his highness's good subjects might not be left to the mercy of the lord Baltimore and his party there, merely for their submission and engagement to the parliament and to his highness.

But we humbly conceive and hope, that there is and will appear to be so much of reason and justice, and so much of his highness's interest recited and expressed in the paper inclosed,* that there will be sufficient cause for his highness to dispose of the government of Maryland (in case it belong not to Virginia) otherwise than to put it into the hands of such a one, who, if once confirmed, will undoubtedly be as ready to slight and oppose the authority of his highness as ever he was to slight and oppose the authority of the parliament, which he hath manifestly and boldly done, and that with a very high hand.

† Sir, your former propenseness to take cognizance of this business makes us presume thus to trouble you, and it being such public concernment in relation to his highness's interest and the good of those profitable plantations, and dispatch of this long tedious dispute, that so those plantations may be settled under the present government, and that we may return to our relations and occasions, from which we have been so long detained.

Your honour's most humble servants,

October the 10th, 1656.

SAMUEL MATHEW,
RICHARD BENNET.

OBJECTIONS against Lord Baltimore's Patent, and Reasons why the Government of Maryland should not be put in his hands, viz.

[Thurlow's State Papers, vol. V. p. 482, A. D. 1656.]

1. By the patent he was to have no land, but such as was uncultivated and inhabited by Pagans only; but Maryland was inhabited, and part of it possessed and cultivated by the English in Virginia, viz.—the isle of Kent, and that long before the name of Maryland was ever heard of.

2. By the patent it is provided, that he make laws with the advice and consent of the inhabitants and freemen; and by the practice of the lord Baltimore and his officers there, the people have no law but what he allows and consents unto.

3. He is enjoined to make laws agreeable to the laws of England; but several of the laws made there were different from and disagreeable to the laws here, as appears by the report of the committee of the navy.

4. By the patent it is provided, that no construction be made thereof, whereby God's holy and truly christian religion, or the heirs and successors of the crown of England should receive any prejudice or diminution.

*The "paper," here referred to, seems to be the one immediately following, entitled, "Objections," &c.

As to religion, the governor and all those of the council in Maryland are bound by oath to defend and maintain the Roman Catholic religion in the free exercise thereof. And as to the heirs and successors of the crown of England, it seems they have nothing to do there; for when the late council of state by authority of parliament required them to issue out writs in the name of the keepers of the liberty of England, and to put the laws of England in execution, they answered, they could not do it without breach of their trust and oath to the lord Baltimore, in reference to his commission from the late king; therein preferring the king's authority, which died with him, and lifting it up above that of the parliament, the only visible power at that time in being.

5. Upon this occasion the commissioners, in pursuance of their instructions from the late council of state by the authority of parliament, in March 1652, took away the government from my lord Baltimore and his officers there, and did actually reduce and settle the province of Maryland in the hands of the parliament, according to an act of parliament of the 3d of October 1650; and then in 1654, upon their revolt, it was again reduced and settled in the name and under the authority of his highness the lord protector, and confirmed by a full and free assembly of that province October 1654.

6. The government there being now no more in the lord Baltimore, but in the parliament first, and then in the hands of his highness, and the acting of the commissioners therein being owned and approved by the late council of state, and also by his highness in his letter of the 8th of October, 1655, to the governor of Virginia; the said lord Baltimore, in opposition and contempt of the supreme authority of this nation, by his instructions caused captain Stone and others, to the number of 200 or thereabouts, to rise up in arms against the government so settled there aforesaid; which said captain Stone, and all the rest, after they had committed many and great outrages, in disarming, plundering, and imprisoning those that adhere to his highness's government, and to their engagement and duty in that behalf, were in a field battle overcome, some slain, and all the rest taken prisoners. And so the said lord Baltimore, choosing rather to adventure his title that way, than to wait the determination of the supreme authority here, lost it upon that account as well as by the reducement; in both which respects the government of that province is now in his highness the lord protector's disposal.

And it is humbly conceived, that his highness will not think fit to re-establish the lord Baltimore in such an absolute and unlimited power as he pretends there, for the considerations, and for these further reasons, viz:

1. In respect to the dissatisfaction and malignancy of the said lord Baltimore and his governors from time to time against the parliament and their interest; namely, several commissions gotten from the king at Oxford, taking captain Ingle's ship, and tampering with the seamen, to carry her for Bristol, which was then in the king's hands, proclaiming Charles II. &c.

2. In respect of the many petitions and complaints of the inhabitants of Virginia and Maryland against a popish monarchical government, so contrary unto and so inconsistent with his highness's interest and the liberty and freedom of his subjects; it being also contrary to the known laws of this land, and particularly of the instrument or platform of government.

3. In order to the peace and the common good of those plantations, which mainly consist in uniting and keeping them under one government; whereby dissensions, quarrels, and cutting of throats, likely continually to arise between such near neighbouring plantations, will be prevented, his highness's authority and interest established, trade encouraged, the excessive planting of tobacco restrained, so making way for more staple commodities, as silk, &c., to be raised; the running away of delinquents and persons indebted from one place to another

taken off, and the whole strength [against]* the common enemy the Indian, or any other enemy, the more readily conjoined upon all occasions; besides that old, great, sad complaint of seducing of poor ignorant Protestants, and papists to bear rule over the freeborn subjects of this nation, will be likely hereby in some measure to be taken off, and yet those of the popish persuasion not debarred of any lawful liberty and freedom, either in relation to civil things, or the exercise of their conscience.

RIC. BENNET,
SAMUEL MATHEW.

A paper relating to Maryland.

[Thurloe's State Papers, vol. V. page 483, A. D. 1653.]

As to those specious pretences of the lord Baltimore of a protestant government being always well affected to the parliament, so much money expended upon that plantation.

We humbly conceive, that the contrary hath been showed and proved in divers and sundry particulars; but if it were so, yet it being before the reducement, and the consequences thereof as to government (which is that only wherein we are concerned) it belongs not to the matter in hand. For those objections against the report of the committee of the navy, we say, that the same was fully agreed on, and ordered by the committee; that it was accordingly read before the council of state the 26th of November, 1653, by them approved and appointed to be drawn up for the parliament, which was accordingly done, as hath been proved by Mr. Blackburne, and is ready to be further satisfied by col. Mathews and Mr. Wakeman, who were present at all the passages thereof.

To that of the lord Baltimore's patent from the king there are these objections; viz. 1. That the same is surreptitious, king James having passed the same by patent to the adventurers and planters of Virginia, and they actually possessed of the isle of Kent long before, and the lord Baltimore's patent was only for uncultivated places, such as were not inhabited by any but Pagans.

2. As being an exorbitant grant to give away so great a part of the dominions to a private person, and one that never brought in any thing of profit at all, or not considerable, to the revenue here, by custom, excise, or any other way, especially since the change of government.

3. As being contrary to law to put the subjects of this commonwealth under the absolute and perpetual authority of a subject, and such a one, who as a papist is not capable of any office or authority relating to government.

4. In respect to the mal-administration and exercise of the power there in nine several particulars, expressed in the report of the committee of the navy, to which we shall add these two; viz.

1. Here is a power of making laws with the consent of the inhabitants and freemen of the said province; but this liberty hath been denied the people, and the lower house (as he calls it) cut short of that power and privilege, and the people in danger of severe punishment for addressing their petitions and complaints to the supreme authority here proved by his own letters and their petitions, which have been produced.—2. Another clause in his patent is that no construction be made thereof, whereby God's holy and true christian religion, or the heirs and successors of the crown of England shall receive any prejudice or diminution. As for the holy and truly christian religion, if the Romish be it, that's indeed strongly provided for by the laws and officers oaths; and for the heirs and successors of the king, which undoubtedly must be the parliament and his highness the lord protector, what place their commands have taken in Mary-

* The editor, Mr. Hazard has here subjoined the following note.—“This mark” (an asterisk.) “is found in the printed copy from which this is taken; perhaps the word *against* may be wanting here.”

land, and how their authority and those that declare themselves for it, have sped from time to time, is evident by that of capt. Ingle, the proceedings of the parliament's commissioners in that place, and the people's petitions.

5. And lastly, in respect of the parliament's ordinance of the 3d of October, 1650, by which all foreign plantations, as well as the rest of the three nations, were to be brought in and settled under the subjection and obedience of this commonwealth, and the present government thereof, notwithstanding any letters patent to the contrary; and Maryland was accordingly taken in, and the parliament actually possessed thereof by virtue of the said ordinance, as by an order of the parliament's commissioners, dated at St. Mary's in Maryland the 29th of March, 1652, renewed under his highness the lord protector, by an order to that purpose, dated at Patuxent in Maryland, the 22d of July, 1654, and settled under his highness's authority by a free and full assembly of that province the 20th of October, 1654.

Concerning the lord Baltimore's being at Oxford and Bristol with the king, and his excuse thereof to recover a debt.

It hath been shewed and proved, that his work was to engage against the parliament, procuring a commission tending to the ruin of their interest, and of all those that were well affected, their ships, goods, debts, money, &c., the one half whereof the lord Baltimore was to have for his great charges expended in that service; his brother, who was then governor of Maryland, the other half; by which it seems Maryland was not always well affected to the parliament, as is alledged; besides another commission procured and contracted for by the lord Baltimore himself, in his own name, concerning the customs in Virginia, which he was to receive under the king; but how many that never acted any thing in those places, were nevertheless sequestered and proceeded against as malignants. Whereas, it is said, that the committee for petitions in the time of the little parliament rejected the petition of col. Mathews concerning the lord Baltimore, it is not so; they were so far from slighting the same, that they looked upon it as too high for them, and therefore ordered the business to be transmitted back again to the council of state, as more proper for their consideration, as by their order may appear.

Whereas the lord Baltimore alledges, that the council of state did not intend the reducing of Maryland, that the word Maryland was struck out of the commissions and instructions after it had been put in; and therefore the commissioners turned out his officers, and took away the government in Maryland without any lawful authority for their so doing; we say,

That the parliament did intend the reducing of all islands and plantations, notwithstanding any letters patent to the contrary, appears by the ordinance, concerning Bermudas, Virginia, and Antigua, which hath been produced; and that all accordingly have been reduced, and are under the obedience and authority of this commonwealth is apparent. And though it be not our work or duty to question or dispute the parliament's intention, but to obey their commands, which we humbly we conceive we have, yet that the council of state did intend the reducing of Maryland we conceive has been shewed and fully proved thus; viz.

1. Because they well knew it was within the bay of Chesapiack.
2. That they having received an account thereof from the commissioners, approved of what they had done, by sending over the same instructions under the seal the next year.
3. In the report drawn up for the parliament they plainly and expressly say the commissions were sent to Maryland.
4. His highness in his letter of the 8th of October last declares his pleasure, that no obstructions be made to what has been acted concerning the civil go-

vernment in Maryland by the commissioners of the late council of state, in pursuance of their instructions. But if the parliament and council of state did indeed decline the reducing of Maryland, and several times express themselves to that purpose, as hath been often alledged; if they had been so clear in that particular, as hath been said, why then did they not declare themselves so? a line or two to that purpose in three years time surely might easily have been procured, which would have taken off further proceedings, nulled what had formerly passed, and prevented all the many and dangerous disturbances, mischiefs, and blood shed, which hath been occasioned by lord Baltimore's lifting up his own authority and particular interest, derived from the king, in opposition and defiance of the authority and interest of the parliament, and his highness the lord protector.

That it might be argued and disputed concerning the word Maryland, putting in and putting out, as is usual in such cases, is very likely; but the commission and instructions, it seems, were at least drawn up thus, and came so to the commissioners, who lived in Virginia, viz. You shall see the engagement tendered, cause all writs and processes to issue forth in the name of the keepers, &c., and put the laws of England in execution: and this to be done in all the plantations in the bay of Chesapeake.

That the commissioners appointed for carrying on that service, as it doth not appear they expected or demanded more than what the parliament required, so they could do no less, the command being so positive, and the expression so plain and clear.

That the said commissioners coming to Maryland with the said commission and instructions, capt. Stone, governor under the lord Baltimore and his council, denied and refused to submit and to yield obedience to that authority, alledging the king's grant to the lord Baltimore, and their oaths to him, as by their letter of the 29th of March, 1652.

Now besides all other former demonstrations and expressions of their disaffection and disobedience in divers particulars proved, viz. taking capt. Ingle's ship, proclaiming Charles II., practising with the king at Oxford and Bristol against the parliament, &c., whether this only, their refusal to comply, were not a plain denial of the parliament's power, and preferring the king's before it, and consequently a full and sufficient occasion and ground, according to the instructions, for the commissioners to take away the government, being also so ill managed and so much complained of by many, yea, most of the people, and to put it into such hands as would own the parliament, and act according to their commands.

Hereupon the government being now taken away from the lord Baltimore, and settled in the hands of the parliament first, 1652; and then of his highness, 1654; capt. Stone and the rest having taken the engagement, and being thereby bound to be true and faithful to the commonwealth, as now established, and nothing appearing first or last from the supreme authority here to disengage him or any other there; how then could capt. Stone introduce the lord Baltimore's authority, as he did, and publish a proclamation in his name, 1653, enjoining all within three months to take an oath to maintain his power, dominion, &c., upon the penalty and forfeiture of their lands, which were to be entered upon and seized upon to his use? and how could the people take the same, being so inconsistent with, so contrary to their oath to the parliament, under whose authority they then actually were? and then whether those who kept to their engagement, and declared themselves for that against all other authority whatsoever, or else those, who falsely and perfidiously revolted from it, and deserted their duty and the trust committed to them, be in an error, and are justly to be blamed? Concerning the late insurrection and blood spilt on the 25th of March, 1655, it appears, and hath been proved, that capt. Stone being reproved by the

lord Baltimore for resigning without striking a stroke, having so many men in arms, and the commission given to capt. Barber to reduce the people to the lord Baltimore, in case capt. Stone would not, the said capt. Stone was hereby stirred and induced to attempt the said insurrection and rebellion; in prosecution whereof, he the said capt. William Stone did levy war, and to that end forced his highness's subjects to take arms one against another, seized the records of the province, armed Papists and others, plundered, disarmed, and imprisoned all those that refused to join with him, chased capt. Gookins's vessel, and fired several guns at her, broke into their houses in the night, so terrifying and affrighting the people, that many of them left their houses, and took to the woods for safety; threatened to fire the ship *Golden Lyon*, and to take away the lives of the chief in authority, who declared themselves for his highness's government according to their engagement and duty; this being acted in such a time, when the country was in peace and in a quiet settled condition, and carried on so fiercely, barbarously, and bloodily, refusing all offers of accommodation and messages to that purpose; shooting several guns at Mr. Richard Gott, railing at and reviling the people, calling them roundheads, rogues, dogs, &c. setting up the lord Baltimore's colours against the colours of the commonwealth, firing upon capt. Fuller and his party several guns without any parley, and killing Mr. William Ayres before any shot made on that side.

Lastly, that capt. William Fuller, &c. the country being in such a sad, distressed, distracted condition, and so deeply and desperately engaged, endangered, and likely to be ruined, through such a wicked and bloody insurrection and rebellion, having used all means that in them lay for the stopping thereof (the Indians also attending their motion, and falling on at or about the same time) having a lawful power, and being authorized and required to provide for conservation of the peace and administration of justice, and it being in his power, God having given those bloody people into their hands, whether it were not a duty incumbent upon them to do something in order to the peace of the country, by taking away some of the chief and most dangerous incendiaries, who otherwise were very likely to attempt the like another time; and in order to justice, that so many, who were found guilty of insurrection, rebellion, robbery, burglary, and murder, should not all of them be suffered to escape, but some few of those many and great delinquents should suffer and be made examples. And for the manner of their proceedings by a council of war, being there in arms, and in a military posture and condition, and being enabled by the commissioners instructions from the council of state to raise an army, and use all acts of hostility to enforce obedience and conformity, there being no indifferent jury to be had, whether wise men and better lawyers, than can be supposed to be there, might not be likely to fall into such an error, if it were an error, all things well weighed and considered.

A BRIEF of the proceedings of the Lord BALTIMORE, and his officers and compliers in MARYLAND against the authority of the Parliament of the commonwealth of ENGLAND, and against his highness the Lord Protector's authority, laws, and government.

[Thurloe's State Papers, vol. V. p. 486, A. D. 1656.]

The province of Maryland, in that state wherein it stood under the lord Baltimore's government, had more need of reducing than any English plantation in America, for these reasons, viz:

1. The covenant, laws, and platform of government established in England declare the suppression and extirpation of popery, to which his highness oath tends; but the lord Baltimore's government declares and swears the upholding and countenancing thereof, both by the officers and people.

2. The lord Baltimore exercised an arbitrary and tyrannical government, undertook a princely jurisdiction, stiles himself absolute lord and proprietor, constituted a privy council, most of Papists, and the rest sworn thereto. This privy council must be the legislative power, that is to put in execution such laws, the laws which the lord Baltimore himself makes and imposeth; and he makes what laws he pleaseth. The people are indeed called to assemblies, but have neither legislative power nor of judicature, that being appropriated to the privy council or upper-house, so that what is determined by them, admits of no reference or appeal.

3. The lord Baltimore's grants of land are made, to the end that the grantees might be the better enabled to do him and his heirs all acceptable service, for the tenure is for all service, to which they must all swear, before they have any grants, without any relation to, or mention of the supreme authority of England, either in this or any thing else that passeth there.

4. That the lord Baltimore issued writs and all other process whatsoever in his own name.

5. Charles Stewart, son to the late king, was in Maryland proclaimed king of England, &c. against which no act, order, or proclamation hath been published by the lord Baltimore or his officers; for although Mr. Greene who made the said proclamation, was put out of the government, yet that action was not mentioned to be the cause, but other matters against the lord Baltimore.

6. That there was a notable practice and compliance of the lord Baltimore and his party with the late king's party in Virginia, against the parliament and their ships, the said lord Baltimore having gotten commission from the king at Oxford to seize and take the ships and goods of all such as would not pay the customs there, which the lord Baltimore was to receive, and undertook to put in execution, but failed thereof through the country's non-compliance; which had it took effect as he designed, would have engaged the country in a war against the parliament, to the apparent ruin and destruction of that plantation, besides the exceeding great damage and loss to the state here, in point of revenue by custom, excise, &c. the hindring of trade and navigation, loss of ships and goods to the merchants, and strengthening of the king's party.

Since the reducement of the province under the obedience of the commonwealth of England:

1. That the lord Baltimore hath utterly disowned and contradicted the said reducement (though acted by commission and instructions from the council of state by authority of parliament, by the commissioners appointed, and the ships sent over for that purpose) terming it rebellion against himself and his government there, scandalizing and abusing the commissioners of the commonwealth of England with the opprobrious names of factious, seditious, malicious and rebellious persons, that they should stir up the people to sedition and rebellion, and were the abettors thereof.

2. That the lord Baltimore hath from time to time instigated and animated his officers to oppose and act contrary to the said reducement, as well by force of arms as otherwise, commanding them to apprehend the state's commissioners and their complices, as rebels to him, and deal with them accordingly; requiring his officers to proceed in his own way of government, and to carry all in his name as before, notwithstanding any thing done by the said commissioners; and to undertake to justify them in such their proceedings, and to bear them out in it.

3. The lord Baltimore in his last letter to capt. Stone doth blame him for resigning up his government into the hands of the lord protector and commonwealth of England, without striking one stroke; taxing him in effect with cowardice, that having so many men in arms, he would not oppose, saying, that Bennet and Claiborn durst as well have been hanged, as have opposed him; or to that effect.

4. That in the last rebellion against his highness the lord protector and commonwealth of England, and the government established in Maryland by their authority, the said lord Baltimore and his officers have in high measure abused the name of lord protector, and under that notion have committed many notorious robberies and murders against peaceable and loyal subjects of the commonwealth of England and his highness the lord protector; and to this end raised men in arms, conferring honours upon base and bloody-minded people, as well Papists as others, and employed them in a violent and formidable manner in battle array, with lord Baltimore's colours displayed, to fight against the lord protector's government and people, yea to shoot against his highness's colours, killing the ensign-bearer; by which means much blood hath been shed, many made widows and fatherless, and great damage, danger, and distress brought upon the whole province. The Indians likewise taking occasion and advantage hereby to fall upon the frontier plantations, have killed two men, and taken some prisoners.

Before the alteration of the government here in England,

The lord Baltimore obtained a patent from the king for a tract of land in the bay of Chesapiak in Virginia, pretending the same to be unplanted; by this means takes away the lands from the Virginians, to whom the same of right belongs, and not only so, but takes away the trade with the nations which they had many years enjoyed; and not being able to manage the trade himself, left it to the Swedes and Dutch, who furnished the Indians with powder, shot, and guns, to the great damage and danger of those plantations, and his highness's subjects; and further most unjustly and cruelly disseised capt. Claiborn and others of the island called Kent, though seated and peopled under the Virginian government three or four years before the king's grant to him; and not the land only, but the estates and lives too of such as opposed him or his officers, hanging some, and killing others, who sought the preservation of their rights and interests from popish violence. Such a beginning had that poor unhappy plantation, being founded upon the rights and labours of other men, and begun in bloodshed, robbery, and all manner of cruelty.

[The foregoing papers, in this note, were copied from Hazard's Collections, vol. 1, p. 620 to 630.]

NOTE (LXXXIX.) p. 545.

[The following *part* of a document is copied from a book in the council chamber, labelled on the back,—“Council H. H. 1656 to 1668.” It being the first document recorded in the book, the first leaf of which having been torn out, except a small remnant thereof, a considerable portion of the said document is now lost. On the said remnant, however, are discernible, in the margin thereof, the following words,—“Instruct. 23d *Octobris*, 1656;”—and at the bottom of the said remnant, on the second page thereof, are the words—“in Jesus Christ”—The third page of the book, which is on the second leaf thereof, and which is entire, commences with the words following :]

—“have liberty of conscience and a free exercise of their religion there, be duly observed in the said province by all the inhabitants thereof, and that the penalties mentioned in the said act be duly put in execution upon any offenders against the same or any part thereof.

3. That his lordship's said lieutenant doe cause such proportions of land to be surveyed and assigned (except royal mines) to such several persons as followeth, until his lordship shall send a new great seal thither (which he will shortly do) whereby the said lands may be granted by pattent under the same (viz.)

To capt. Josias Fendall, his lordship's present lieut. there—2000 acres.

To Mr. Luke Barber,— 1000 as.

To Mr. Thomas Truman,	- - - - -	1000 acres.
To Mr. George Thomson,	- - - - -	1000 as.
To Mr. John Langford,	- - - - -	1500 as.
To Mr. Henry Coursey,	- - - - -	1000 as.

Provided that none of the lands above mentioned be assigned in any place formerly disposed of by his lordship or his authority to any other person, nor sett out nor reserved for his lordship's own use. And provided that in the said assignments the usual respective yearly rent of two shillings sterling for every hundred acres of all the said lands to be payed to his lordship and his heirs for the same be reserved and payed respectively or the value thereof in such commodities as his lordship or his heirs or his or their officer or officers appointed from time to time to collect and receive the same shall accept in discharge thereof, for all which this shall be your warrant.

4. That they doe take special care of those widdowes who have lost theyr husbands in and by occasion of the late troubles theare, viz. Mrs. Hatton, Mrs. Lewis, and Mrs. Eltonhead, whom his lordship would have his said lieutenant to cause to be supplied out of such rents and other profit as are due to his lordship and can be gott, for their present relief and subsistence in a decent manner in case they stand in need thereof, and that they let his lordship know wherein he can doe them any good there in recompence of their sufferings of which his lordship is very sensible, and that they assure them on his lordship's behalfe that he will continue his utmost endeavours (by soliciting his highnesse and council) for the procuring of justice to be done them for the lives of their husbands and satisfaction for their losses from those who have done them so great injuries, which he doubts not but will be at last obtained.

5. That they cherish and comfort in what they can all such persons as have approved themselves faithfull to his lordship and done good service in the late troubles there: that his lordship's said lieutenant preferre those persons before any others to such places and employments of trust and profit as they may be respectively capable of, and in particular Mr. Thomas Truman, Mr. George Thomson, lieutenant Thomas Tunnell, and Mr. Barton, and that his said lieutenant and councill lett his lordship understand from time to time wherein he can upon any occasion requite them and others who have bin faithful to his lordship as aforesaid with any thing there for theyr advantage according to theyr respective merits, assuring them that his lordship will be very ready and willing to gratify them in any thing that shall be reasonably desired of him and in his power to doe.

6. That whereas a windmill at St. Mary's which was formerly belonging to major generall Edward Gibbons late deceased was assigned by the said Gibbons his widdowe to his lordship in satisfaction of a debt of one hundred pounds sterling due to his lordship from the said major Gibbons his lordship requires his said lieutenant and councill to take speciall care that the said mill be preserved and improved to the best advantage for his lordship's use and benefitt.

7. That they doe take speciall care that no encroachments be made by any upon any part of his lordship's said province, for the better prevention whereof his lordship requires his said lieutenant and councill to cause the bounds thereof to be kept in memory and notoriously knowne especially the bounds between Maryland and Virginia on that part of the countrey knowne there by the name of the eastern shore to which his lordship would have them peruse one of the maps of Maryland which his lordship formerly sent thither whereby the said bounds are described, and his lordship hath also for their direction therein sent heerewith a copy of a proclamation published heretofore by the then governor and councill of Virginia, for prohibiting any of Virginia to trade with the Indians in Maryland without his lordship's lycence which proclamation bore date

4th of October, 1638, and therein are described the bounds between Maryland and Virginia, the said coppye haveing bin transcribed out of another copie thereof which his lordship hath, attested by Mr. Richard Kempe deceased who was secretary of Virginia when the said proclamation was made.—Given under his lordship's seale at armes 23d of October, 1656. C. BALTEMORE."

NOTE (XC.) p. 545.

"Commission to Philip Calvert, Esqr.

Cecilius absolute lord and proprietary of the provinces of Maryland and Avalon lord baron of Baltimore, &c., To all the inhabitants and people in the said province of Maryland and to all others whom these presents shall any way concern, greeting, Know yee that we reposing special trust and confidence in the wisdom, diligence, and fidelity of our very loving brother Philip Calvert, esqr. have constituted, appointed, and ordained, and by these presents do constitute, appoint, and ordaine him the said Philip Calvert to be one of our councill of state and conservator and justice of peace within our said province of Maryland untill wee or our heirs shall signify our or theyr pleasure to the contrary under our or theyr hand and seale at armes, And wee do hereby give and grant unto him the said Philip Calvert full power and authority for that purpose from time to time and at all times during his so being of our said councill of state there to meete and assemble himself in councill upon all occasions in our said province with our lieutenant of our said province for the time being and others of our councill there, and in all things to doe and act as one of our councill of state of our said province in as ample manner and forme, as any other councillor of ours there can may or ought to doe (as being of our said councill of state there.) And wee doe hereby further will and grant that he the said Philip Calvert shall have receive and enjoy all such powers privileges preheminences jurisdictions immunities and advantages whatsoever which are belonging and incident to one of our councill of state and conservator and justice of peace there (in as full and ample manner as any other of our councill there) may can or ought to have and enjoy as a councillor conservator and justice of peace in our said province, Heereby willing and requiring our said lieutenant and the rest of our councill of the said province of Maryland to admitt and receive him the said Philip Calvert as one of our councill of state conservator and justice of peace of and in our said province as aforesaid. Provided allways that he take in open court in our said province the oath of a councillor of state appointed by us to be taken by those of our councill there before he sitt or act as one of our councill of state and conservator or justice of peace in our said province to be administered unto him by our said lieutenant or any two of our councill there who are heereby respectively impowered and required to administer the same accordingly, And wee doe also heereby constitute appoint and ordain him the said Philip Calvert to be our principal secretary of our said province of Maryland, and to have all such priviledges and benefitts as belongeth to our principal secretary there, And wee doe by these presents appoint constitute and ordaine the said Philip Calvert to be our principall officer and keeper of the acts and proceedings of us and our lieutenant and councill there for the time being, and of and for the entring and recording of all grants by us and our heires to be made of any lands or offices within our said province of Maryland, and for the probates entring and recording of wills and inventorys and granting of letters of administration, and for the entring and recording of all other matters acts and things, which by any instructions lawes or ordinances made or given for or concerning our said province of Maryland shall or ought by the appointment of us or our heires or by the appointment of our lieutenant or other chief governor there for the time being, or otherwise, to be entered and recorded, To have and

to hould execute and enjoy the said office and offices together with the privileges and benefitts aforesaid unto him the said Philip Calvert until wee or our heires shall signify our or their pleasure to the contrary and no longer, Provided always that he take in open court in our said province the oath of the secretary there before he act as secretary in our said province to be likewise administered unto him by our said lieutenant or any two of our councell there who are heereby respectively empowered and required to administer the same accordingly.— Given our hand and seale at armes the seventh day of November in the five and twentieth yeare of our dominion over the said province of Maryland and in the yeare of our Lord God 1656.”

[Taken from the record book entitled “Council HH. 1656 to 1668,” p. 7.]

NOTE (XCI.) p. 547.

“Anno. 1657.

“At a council held at St. Mary’s 18 ^o Junii	}	Present	}	The Lieutenant and Mr. Secretary.
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The governor declared his resolution to depart this province and therefore (to the intent justice might heere be duly administered in his absence) did nominate Luke Barber, esqr., his deputy lieutenant and signed his commission in the words following:

Josias Fendall lieutenant and chief governor of the province of Maryland To all the inhabitants and people of the said province and all others whom these presents shall or may concerne, greeting, Whereas the lord proprietary by commission bearing date the tenth of July in the five and twentieth yeare of his dominion hath given granted and confirmed unto mee the chiefe government of this his said province of Maryland in as large and ample manner to all intents and purposes as it was held and enjoyed by captaine William Stone, And whereas his said lordship by commission bearing date the sixth day of August in the seventeenth yeare of his dominion did grant unto the said captaine William Stone (in case of death or absence out of the province) power to nominate elect and appoint any other person of the councell in his place, Know yee therefore that I for divers good causes me thereunto moving and being confident of the industry integrity and fidelity of Mr. Luke Barber to his said lordship, Have nominated constituted and appointed and doe by these presents nominate constitute and appoint the said Luke Barber my deputy lieutenant of this province (reserving unto myself all benefitts allowed me by his said lordship.) To have and to hould the said untill such time as I returne againe into this province or that the lord proprietary or his heires signify theyr pleasure to the contrary, Provided always that the said Luke Barber grant no warrants to any person or persons for the survey of any lands but upon certificate from the secretary of state of this province of rights duly entred in his office for the same strictly charging and requiring all persons to yield all due obedience to him the said Luke Barber as my deputy as they will answer the contrary at their perill.— Given under my hand and seale at St. Mary’s this 18th day of June Anno Domi. 1657.

JOSIAS FENDALL.”

[Taken from the record book, entitled, “Council HH. 1656 to 1668,” p. 9.]

NOTE (XCII.) p. 553.

“Instructions directed by the right honble. Cecilius absolute lord and proprietary of the provinces of Maryland and Avalon lord baron of Baltimore, &c., To his lordship’s lieutenant and the rest of his lordship’s council of the said province of Maryland for the time being.

C. BALTEMORE.

Imprimis, his lordship doth hereby authorise will and require his lieutenant of the said province of Maryland for the time being to discharge any one of his lordship's council of the said province from being of his lordship's council there who shall desire the same, And his lordship doth also hereby authorise him that he may with the advice and approbation of any three of his lordship's council there for the time being whereof his lordship's brother Philip Calvert, esqr., to be one discharge any person or persons nowe of his councell in that province from being of his lordship's councell there who shall refuse to act as one of his lordship's councell there or to give attendance at his lordship's courts in that province when they shall be respectively thereunto required by his lordship's lieutenant there for the time being without a just and lawful excuse for the same to be allowed and approved of by his lordship's said lieutenant and his lordship's said brother Philip Calvert, esqr., any former commission warrant or instruction to the contrary hereof in any wise notwithstanding.

Instruct.
20th Nov'r.
1657.

2. Whereas his lordship hath herewith sent over a new great seal of the said province by captain Josias Fendall his lordship's lieutenant of the said province and hath committed the custody thereof to him the said captaine Josias Fendall according to his lordship's commission to him for that purpose his lordship doth hereby declare that his lieutenant and keeper of the said greate seale for the time being shall have power and authority to passe grants or pattents in his lordship's name under the same and in such forme as his lordship hath heretofore appointed to any person or persons whatsoever as he shall thinke fitt of such lands in the said province as are or shall be due to them respectively from his lordship by vertue of any of his conditions of plantation or any commission warrant instruction or direction heretofore given or made by his lordship or hereafter to be obtained from him under his hand and seale at arms for the same and to every servant which hath or shall serve out his time with any adventurer or planter fifty acres under the usual rent of one shilling sterling for every fifty acres to be paid yearly to his lordship and his heirs which grants or pattents so to be passed after they shall be respectively attested by the subscription of his lordship's lieutenant of the said province and his lordship's secretary or in case of his the said secretary's death or absence out of the said province of any two or more of his lordship's councell there for the time being on the respective grants or pattents and after the commission warrant instruction or direction under his lordship's hand and seale at armes for the passing thereof respectively shall be duly recorded there his lordship doth heereby and not otherwise ratify and confirme as his acts and deeds which shall bind his lordship and his heirs accordingly on that behalfe although such person or persons who shall have any such grant or pattent passed unto them as aforesaid of any lands due unto them by vertue of any of his lordship's conditions did not make their claim nor passe their patents thereof in due time or have since forfeited their right unto the same, any former commission warrant, order, instructions or any other thing to the contrary hereof in any wise notwithstanding, Provided always that all and every such person or persons respectively who shall have any such grant or pattent passed unto them do take the oath of fidelity to his lordship and his heires mentioned in his last conditions of plantation for that province with such alteration in the said oath as was agreed unto by his lordship and directed in the report of the committee for trade dated the 16th of September 1656 concerning that province a copy of which report attested by the clerk of that committee his lordship sent into that province together with his instructions to his lieutenant and councell there dated 23d of October 1656, wherein the said report is mentioned, And provided also that such person or persons who have acted or abetted any thing against his lordship's lawful right and jurisdiction there do make and

subscribe in the presence of his lordship's lieutenant and principal secretary of the said province for the time being or one of them a submission of the forme hereunto annexed to remaine upon record there or such other submission as his lordship's lieutenant and secretary or either of them in the absence of the other out of the said province shall thinke fitt before any such grant or pattent of any land in the province be passed under his lordship's great seale unto them respectively as aforesaid, And provided also that before any such person or persons shall have any such grant or pattent passed unto them as aforesaid they do pay or satisfy his lordship's receiver general there for his lordship's use all such arreares of rent not before satisfied or lawfully discharged as are or shall be due unto his lordship for the land which shall be granted by any such pattent from the time that by his lordship's conditions of plantation or other warrant for the passing thereof the said pattent ought to have bin passed untill the time of the passing the said pattents respectively.

3. That whereas his lordship did heretofore send a warrant for the granting ten thousand acres of land in the said province to Edward Eltonhead, esqr. upon certain termes and conditions of a certain number of persons to be transported by the said Edward Eltonhead within a certain time which time was likewise by two declarations afterwards of his lordship enlarged as by the warrants and declarations relation being thereunto had may more at large appear, And whereas neither his lordship nor the said Edward Eltonhead have had as yet any certain information of the passing a grant in Maryland under his lordship's former greate seale of that province of the said land to the said Edward Eltonhead according to the said warrant and declaration and that it is doubtfull whether the said original warrant and declarations be not lost and imbezelled in the late troubles there, therefore his lordship thought fit to send herewith as he now doth trew copies under his lordship's hand and lesser seale at armes of the said warrant and declarations, And doth hereby authorise will and require his lieutenant and keeper of his greate seale of the said province for the time being that in case he find that there was not formerly a grant or pattent passed of the proportion of land under the said former greate seale to the said Edward Eltonhead or that the said grant or pattent and record thereof be lost and cannot be found, that then the said lieutenant and keeper of the said greate seale do cause a grant to be passed under his lordship's new greate seale of the said province to the said Edward Eltonhead and his heires of the said proportions of land according to the true intent and meaning of the said warrant, &c.—[N. B. The remainder of this clause being long and entirely of a private nature, it was deemed unnecessary to transcribe any more of it, or to insert it herein.]

4. That his lordship doth hereby authorise his said lieutenant of the said province with the advice and approbation of his lordship's said brother to readmit if he think fitt Mr. Robert Clark to be one of his lordship's councill of the said province to all intents and purposes whatsoever in as ample manner as formerly he was by his lordship's commission for that purpose to him, and also to add any other person or persons inhabiting the said province not exceeding the number six to be of his lordship's councill there to all intents and purposes over and above such as are already or that shall hereafter be nominated and appointed by his lordship to be of his lordship's councill there, Provided that such person or persons so to be added to his lordship's councill there as aforesaid do take the oath of a councillor there to his lordship before he or they do act as one of his lordship's councill there respectively.

5. That his lordship doth hereby authorise his lieutenant of the said province for the time being with the approbation of any three of his lordship's councill there whereof his lordship's principal secretary for the time being to be always one to make any foreigner as he shall think fitt capable of his lordship's condi-

tions of plantation there, and to cause grants or pattents of land there to be passed unto any such person or persons accordingly as if he she or they were of British or Irish descent any former commission warrant or direction from his lordship to the contrary in any wise notwithstanding.

6. Whereas his lordship hath in these instructions and otherwise authorised and appointed his lieutenant of the said province for the time being and in particular the aforesaid captain Josias Fendall his lordship's present lieutenant there to act and do several things with the advice and approbation of his lordship's brother Philip Calvert, esqr. Now in case the said Philip Calvert should dye or by absence out of the said province or otherwise should be disappointed of acting there accordingly his lordship doth hereby authorise and appoint in every such case the said captain Josias Fendall and every other his lordship's lieutenant of the said province for the time being to act and doe the same things with the advice and approbation of captain Thomas Cornwaleys esqr. in lieu and stead of the said Philip Calvert esqr. which his lordship hath by these instructions or any other writing under hand and seale authorized and appointed or shall hereafter by any writing under his hand and seale authorise and appoint to be acted or done with the advice and approbation of the said Philip Calvert esqr. and that in case where any grant or pattent of land is to be passed to his lordship's lieutenant and keeper of his great seale there for the time being by vertue of his lordship's conditions of plantation or any other commission warrant or instructions under his lordship's hand and seale for that purpose his lordship doth hereby declare authorise and require his said brother Philip Calvert esqr. (and in case of his death or absence out of the said province the said capitaine Thomas Cornwaleys) and two such others of his lordship's councill there for the time being as he and our said lieutenant shall appoint, to attest every such grant or pattent to his lordship's lieutenant of the said province and keeper of his great seale there for the time being as aforesaid by the subscriptions of their respective names on every such respective grant or pattent before it shall be in force or bind his lordship or his heirs as his act and deed any thing in these instructions or in any other thing to the contrary hereof in any wise notwithstanding.—Given under his lordship's hand and great seale at armes the 20th day of November in the 26th yeare of his lordship's dominion over the said province of Maryland and in the yeare of our Lord God 1657.

The forme of the Submission above mentioned.

I A. B. doe promise and engage to submitt to the authority of the right hon'ble Cecilius lord Baltemore within this province of Maryland according to his pattent of the said province and to his present lieutenant and other officers there by his lordship appointed to whom I will be aiding and assisting and will not obey or assist any here in opposition to them."

[Taken from the record-book in the council chamber, entitled, "Council, &c. H H. 1656 to 1663," p. 10, &c.]

THE END.

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